

Road construction worker who inhaled fumes from new blacktop mixture was not injured as result of traumatic event entitling him to accidental disability retirement benefits. *Beverly v. Public Employee's Retirement System*, 92 N.J.A.R.2d (TYP) 41.

Fall from ground level cannot constitute great rush of force necessary to find traumatic event entitling claimant to accidental disability retirement benefits. *Keaton v. Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 37.

Hospital attendant's injury while assisting patient from bed to chair did not result from traumatic event qualifying her for accidental disability retirement benefits. *Siniscalchi v. Board of Trustees of the Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 30.

Supervisor's transfer threats did not constitute a traumatic event qualifying employee for accidental disability retirement benefits. *Fay v. Board of Trustees of the Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 27.

Maintenance worker's fall from three foot scaffolding was not traumatic event entitling him to accidental disability retirement benefits. *Minkus v. Board of Trustees of the Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 19.

School crossing guard's fall on sidewalk was not traumatic event in course of employment entitling her to accidental disability retirement benefits. *Osinga v. Board of Trustees, Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 16.

17:2-6.8 Option selection

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. 17:2-6.7, 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.

As amended, R.1971 d.71, effective May 18, 1971.

See: 3 N.J.R. 50(a), 3 N.J.R. 117(b).

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Neutralized gender references throughout.

17:2-6.9 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 System 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 System.

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Neutralized gender references throughout, and deleted "by both the employee and his employer" and deleted a former second sentence at the end.

17:2-6.10 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 their 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 member's involuntary disability retirement and all available medical documentation;

3. The member has a period of 30 days to contest his or her 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 retirement system;

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 Allowance" setting forth the type of allowance 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.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

In (a), neutralized gender references throughout, rewrote 1 and 2, deleted a former 3, and recodified former 4 through 7 as 3 through 6. Amended by R.2002 d.268, effective August 19, 2002.

See: 34 N.J.R. 1600(a), 34 N.J.R. 2971(a).

In (a)5, substituted "option" for "allowance, (without option) payable under the statute".

17:2-6.11 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.

(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.

Amended by R.1974 d.230, effective August 19, 1974.

See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Rewrote the section.

Case Notes

Suspended employee who retired after completing court-ordered pretrial intervention program was not entitled to early retirement benefits. *Gulics & Simeone v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 228.

17:2-6.12 Service retirement; eligibility

A member becomes eligible for "Service" retirement on the 1st 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. 43:15A-47a, and requests that date.

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Neutralized a gender reference in the first sentence, and added a second sentence.

Case Notes

Denial of petitioner's request for additional four years of creditable service was appropriate. *Alcaro v. Division of Pensions, the Alternate Benefit Program*, 94 N.J.A.R.2d (TYP) 124.

17:2-6.13 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 System 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.

Amended by R.1998 d.322, effective July 6, 1998.

See: 30 N.J.R. 1026(a), 30 N.J.R. 2514(a).

In (a), deleted "under age 60," 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.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

In (a), deleted "as of the anniversary date of their retirement" following "System" in the first sentence; and in (b), neutralized gender references throughout.

Amended by R.2000 d.248, effective June 19, 2000.

See: 32 N.J.R. 1152(a), 32 N.J.R. 2257(a).

Rewrote (a).

Case Notes

Regulations adopted by the Board of Trustees of Teachers' Pension and Annuity Fund (TPAF) and Board of Trustees of Public Employees' Retirement System (PERS) which applied to all disability retirees, regardless of age, and allowed Boards to require physical examination for good cause after five years exceeded legislative requirements of statute, and thus, regulations were invalid. *New Jersey Education Association v. Board of Trustees, Public Employees' Retirement System*, 327 N.J.Super. 326, 744 A.2d 353 (N.J.Super.A.D. 2000).

Township not required to reinstate formerly disabled employee who resigned before applying for disability benefits. *Township of Dover v. Board of Trustees, Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 83.

17:2-6.14 Disability retiree; annual report (employment, earnings, test and adjustment)

(a) All disability retirees shall be required to file a report with the System which shall include copies of the retiree's IRS 1040 forms and W-2 forms and 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 each year.

1. Such report shall be filed with the System before the following April 30.

2. Failure on the part of the retiree to file a completed report with the System before April 30 shall result in the presentation of the retiree's case to the PERS Board of Trustees, who may impose penalties or suspend the retiree's entire retirement allowance for the period the report is in default.

(b) If a retiree reports employment and earnings, then the following tests shall be made by the System to ascertain:

1. If the retiree is engaged in a position subject to coverage by the System, the retirement allowance shall be canceled and the retiree shall be reenrolled in the System pursuant to N.J.S.A. 43:15A-44, effective as of the date of the retiree's appointment to such position. Any disability retirement benefits received after this date of appointment shall be refunded to the System.

2. If the retiree is engaged in employment and the gross earned income for the preceding calendar year exceeds the difference between the pension and the salary the retiree would have been receiving had the retiree continued to work for the former employer (normal increment steps and salary range revisions will be considered but no promotional assumptions will be made) an appropriate adjustment to the pension for the period will be made by such difference.

3. If it is found, on or after April 30, that gross earned income for the calendar year exceeded the difference between the pension and the salary of the retiree's former position and if the retiree does not refund the excess pension to the System within 30 days of notification of the difference, the pension portion of the retirement allowance shall be reduced, dollar for dollar, by the excess earnings. The Board of Trustees shall determine the length of time that the retiree's pension allowance will be reduced.

Amended by R.1998 d.323, effective July 6, 1998.

See: 30 N.J.R. 1026(b), 30 N.J.R. 2514(b).

Rewrote the section.

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Rewrote (b)3.

17:2-6.15 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 his or her 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 of Trustees, if:

1. The applicant demonstrates to the satisfaction of the Board of Trustees that he or she 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 of Trustees 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.

New Rule, R.1999 d.36, effective February 1, 1999.

See: 30 N.J.R. 3375(b), 31 N.J.R. 458(a).

Amended by R.2003 d.391, effective October 6, 2003.

See: 35 N.J.R. 2408(a), 35 N.J.R. 4734(a).

Deleted (c) and (d).

17:2-6.16 Compulsory retirement; Law Enforcement Officers (LEO)

(a) Members classified as "Law Enforcement Officers" shall be retired automatically by the Board as of the compulsory retirement date established pursuant to N.J.S.A. 43:15A-99.

(b) Should a member classified as a Law Enforcement Officer fail to file an application with the Division before the member's compulsory retirement date, the member shall be granted the maximum allowance payable on the member's account; however, no retirement checks will be disbursed until the member files the required application.

(c) If an application is not filed with the Division before a period of 30 days has elapsed after the Board has acted on the member's retirement, the member shall not be eligible to exercise any of the available retirement survivorship options and the member's retirement on maximum allowance shall stand as approved.

(d) When such a member files an application with the Division, the member shall be eligible to receive retirement benefits for the months that have elapsed since the date of the member's compulsory retirement, provided satisfactory evidence is received to show that the member terminated

employment as of the member's compulsory retirement date.

(e) No retirement benefits shall be paid for any period the member continued in service beyond the compulsory retirement date, nor shall the member receive any credit for retirement purposes for salary received or service rendered beyond the compulsory retirement date.

(f) An LEO member who is also enrolled as a non-LEO member cannot continue the LEO membership or employment in the LEO capacity beyond age 65 should the member continue his or her membership on the basis of the member's non-LEO position pursuant to N.J.S.A. 43:15A-99.

Amended by R.1974 d.230, effective August 19, 1974.

See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Neutralized gender references and substituted references to the Division for references to the system throughout; and in (f), added N.J.S.A. reference.

17:2-6.17 Approved allowance

When a retirement allowance becomes effective, the type of retirement benefit and option elected shall stand as approved.

Amended by R.2002 d.268, effective August 19, 2002.

See: 34 N.J.R. 1600(a), 34 N.J.R. 2971(a).

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

17:2-6.18 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.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Substituted a reference to regular monthly allowance for a reference to monthly allowance, and neutralized gender references throughout.

17:2-6.19 (Reserved)

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

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Section was "Maximum allowance prescribed".

17:2-6.20 Final compensation; 10 and 12-month members reported monthly

(a) In order to determine the final compensation (three-year average) for benefits on a member reported on a monthly basis under a 10-month contract, use the creditable salaries upon which contributions were made to the System for the member's final 30 months, or the highest three fiscal years of pensionable service, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees.

(b) In order to determine the final compensation (three-year average) for benefits on a member reported on a monthly basis under a 12-month contract, use the creditable salaries upon which contributions were made to the system for the member's last 36 months or the highest three fiscal years of pensionable service, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees.

(c) 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.

Amended by R.1974 d.230, effective August 19, 1974.
See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).
Amended by R.2000 d.26, effective January 18, 2000.
See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).
Rewrote the section.

Case Notes

Full amount of pension; requiring former employer to submit retroactive payment into retirement system reserve fund. *Muzzarelli v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 214.

17:2-6.21 Determination of last year's salary; veterans paid on a monthly basis

(a) In order to determine the last year's salary for a veteran with 35 or more years of creditable service, age 55 or older, reported on a monthly basis under a 10-month contract, use the creditable salaries upon which contributions were made in the member's final 10 months of pensionable service preceding retirement, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees.

(b) In order to determine the last year's salary for a veteran with 35 or more years of creditable service, age 55 or older, reported on a monthly basis under a 12-month contract basis, use the member's creditable salaries upon which contributions were made in the member's final 12 months of pensionable service preceding retirement, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees.

(c) In order to determine the last year's salary for a veteran with 20 or more years of creditable service, age 60 or older, or a veteran with 25 or more years of creditable service, age 55 or older, reported on a monthly basis under a 10-month contract, use the creditable salaries upon which contributions were made in the member's final 10 months of pensionable service preceding retirement or in the consecutive 10-month period in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees.

(d) In order to determine the last year's salary for a veteran with 20 or more years of creditable service, age 60 or older, or a veteran with 25 or more years of creditable service, age 55 or older, reported on a monthly basis under a 12-month contract, use the member's creditable salaries upon which contributions were made in the member's final 12 months of pensionable service preceding retirement, or in the consecutive 12-month period in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees.

(e) In order to determine the last year's salary for a veteran reported on any combination of 10 and 12-month contract years in such months, the last year's salary shall be determined on a proportional basis.

Amended by R.1974 d.230, effective August 19, 1974.
See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).
Amended by R.2000 d.26, effective January 18, 2000.
See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).
Rewrote the section.

Amended by R.2002 d.269, effective August 19, 2002.
See: 34 N.J.R. 1365(a), 34 N.J.R. 2971(b).

In (a) and (b), substituted "55" for "60"; in (c) and (d), substituted "60" for "62" and inserted "or a veteran with 25 or more years of creditable service, age 55 or older," preceding "reported"; in (e), substituted "In order to determine the last year's salary for a veteran" for "If a member was".

17:2-6.22 Waiver

(a) 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.

(b) Such retired members or beneficiaries may cancel the waiver effective as of the first day of any month subsequent to the receipt of the notice of cancellation; however, they may not make a claim for retroactive payment of any benefits waived prior thereto.

Amended by R.2000 d.26, effective January 18, 2000.
See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

In (b), substituted a reference to retired members and beneficiaries for a reference to persons, neutralized a gender reference, and substituted a reference to retroactive payment for a reference to payment.