



State of New Jersey
DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
(609) 292-7524 TDD (609) 292-7718
www.state.nj.us/treasury/pensions

JON S. CORZINE
Governor

MAILING ADDRESS:
PO Box 295
TRENTON, NJ 08625-0295

LOCATION:
50 WEST STATE STREET
TRENTON, NEW JERSEY

MICHELLENE DAVIS
Acting State Treasurer

FREDERICK J. BEAVER
Director

September 17, 2007

TO: Certifying Officers of the Public Employees' Retirement System (PERS), Teachers' Pension and Annuity Fund (TPAF), Police and Firemen's Retirement System (PFRS), and State Police Retirement System (SPRS)

FROM: Virginia Martucci, Chief, Retirement Bureau 

SUBJECT: Disability Retirement Guidelines

This letter provides guidance regarding changes, resulting from a decision by the Supreme Court of New Jersey¹, to the standard definitions and administrative procedures used by the Division of Pensions and Benefits in determining eligibility for disability retirement benefits.

In its decision, the Court examined the following three areas which are discussed herein:

1. "traumatic event";
2. pre-existing disease; and
3. disability from "usual or any other duty."

Certifying Officers and their administrative staff who perform duties involving pension and the certification of information for an employee's retirement should familiarize themselves with the new standards and review the explanations provided for each of the areas discussed.

Accidental Disability Standards and Traumatic Event

To qualify for an Accidental Disability Retirement, a member must satisfy:

1. That he or she is permanently and totally disabled;
2. As a direct result of a "traumatic event" that is
 - a. Identifiable as to time and place,
 - b. Undesigned and unexpected, and
 - c. Caused by a circumstance external to the member (not the result of preexisting disease that is aggravated or accelerated by the work);

¹ Richardson v. Board of Trustees, PFRS, N. J. (2007) (decided July 24, 2007). While the Richardson case specifically addressed Accidental Disability Retirement in the PFRS, the revised standards are applicable to all State-administered retirement systems with Accidental Disability Retirement benefits (PERS, TPAF, and SPRS).

3. That the “traumatic event” occurred during and as a result of the member’s regular or assigned duties;
4. That the disability was not the result of the member’s willful negligence; and
5. That the member is mentally or physically incapacitated from performing his usual or any other duty.

Eligibility for Accidental Disability Retirement requires that the member be permanently and totally disabled as a direct result of a “traumatic event.”

Previous standards² for “traumatic event” required, in part, that the cause of the injury be “a great rush of force or uncontrollable power.” The Court has now determined that not every case requires the “great rush of force” test. In fact, no particular amount of force is necessary in determining whether a member has met with a “traumatic event.”

In revising the standards, a member who is injured as a direct result of an “**identifiable, undesigned and unexpected**” mishap caused by “external circumstances” may now satisfy the “traumatic event” standard.

For example, a policeman can be shot while pursuing a suspect; a librarian can be hit by a falling bookshelf while re-shelving books; a social worker can catch his or her hand in the car door while transporting a child to court. Each of these examples is “**identifiable**” as to time and place, and “**undesigned and unexpected**” in the normal course of work. Each of these events may meet the “traumatic event” standard, as long as the member also satisfies the remaining requirements for Accidental Disability Retirement; including that the event occurred during the performance of regular or assigned duties, was not the result of the member’s willful negligence or a pre-existing disease or injury (see below), was caused by circumstances external to the member, and that the disability is permanent and total.

An employer’s administrative staff should note this revised standard for “traumatic event” when requested to provide information to the Division’s Disability Review Unit in support of an employee’s *Application for Disability Retirement*.

Pre-existing Disease and Conditions

While the revised standard for “traumatic event” allows that unexpected injuries when performing ordinary job duties may qualify for Accidental Disability Retirement, it is important to note that some injuries sustained during ordinary work effort will qualify, *while others will not*. To this end, the Court addressed whether the injury resulted from an event that is “identifiable” as to time and place, an “undesigned and unexpected” event during the regular performance of work, and that it is not the result of pre-existing disease alone or in combination with the work.

Therefore, a “traumatic event” must be an accident or external happening that directly causes the injury and cannot be the result of pre-existing disease alone or disease in combination with the work effort. Under the revised standard, when the normal stress and strain of the job combines with a pre-existing disease to cause injury or

² Defined under the Supreme Court decision, Kane v. Board of Trustees, PFRS, 100 N. J. 651 (1985).

degeneration over time, the member is not entitled to an Accidental Disability Retirement benefit.

For example, a police officer who has a heart attack while chasing a suspect most likely has not experienced a “traumatic event.” In this case the work effort alone was not the cause of the injury, but rather the combined effect with pre-existing disease. The same police officer, permanently and totally disabled during the chase *because of a fall*, may be determined to have suffered a “traumatic event.”

Similarly, a gym teacher who develops arthritis over the years from the repetitive effects of his work most likely has not suffered a “traumatic event.” This disability is the result of degenerative disease and is not related to an event “identifiable” as to time and place. The same gym teacher who trips over a riser and is injured may be able to satisfy the standard for “traumatic event.”

An employer’s administrative staff should note this revised standard for Accidental Disability Retirements.

Medical documentation required for an Accidental Disability Retirement must include information that addresses the issue of any possible pre-existing disease or a similar condition. All medical documentation must be reviewed by the Independent Medical Examiners and the Medical Review Board to rule out pre-existing disease based upon the revised standard before an Accidental Disability Retirement can be submitted to the Board of Trustees for approval.

Additionally, the Division requests that all Workers’ Compensation documents and related medical reports, including functional capacity evaluations, and any other tests by Workers’ Compensation insurance carriers or in the possession of the employer be provided for review.

Disability from “Usual or any Other Duty”

The third area addressed by the Court is that of “permanent and total disability.” To qualify for Accidental **or** Ordinary Disability Retirement benefits a member must be permanently and totally disabled and incapacitated from performing his or her usual duty or “any other job available from his or her employer.” In all future cases of disability retirement, the Division of Pensions and Benefits will require information from employers about the availability of “other jobs.”

An employer’s administrative staff must now respond in writing (example attached) — by letter, fax, or e-mail — to the Disability Review Unit of the Division of Pensions and Benefits, regarding any other job duty available that the employer is willing to offer to the member.

If the employer indicates that the employee is employable in the general area of his or her ordinary employment, the Disability Review Unit will request additional information about the position the employer is willing to offer. This information will be provided to the Independent Medical Examiners and the Medical Review Board to determine if the member is fit to perform the available duty, or would be considered disabled from that duty as well.

No cases for disability retirement will be submitted to the Board of Trustees for approval, until the issue of “any other job” available with the employer is completely resolved.

REVIEW OF CURRENT APPLICATIONS

In light of the new standards for disability retirements, the Division of Pensions and Benefits is reviewing all disability retirement cases that are currently in processing, pending Board of Trustees review or approval, or not yet submitted to the Board of Trustees.

Accidental Disability retirement cases that are within their 45-day appeal rights, or on the docket to be heard before the Office of Administrative Law (OAL), the Appellate Division of the Superior Court of New Jersey, or the Supreme Court of New Jersey may also be reviewed when involving the sole issue of "traumatic event".

Employers should make their employees aware that these additional levels of review might delay the approval of some pending disability retirements. The Division will do everything it can to expedite review of these cases under the new standards and apologizes for any inconvenience it may cause its members.

The Changes Described Above Do Not Effect

The Division of Pensions and Benefits will not review any case previously denied by the Board of Trustees that has been fully adjudicated. This includes cases that are past the 45-day right of appeal (that were not appealed in a timely manner) and those that have completed the appeal process. It also includes any case previously denied by the OAL and/or the Appellate Division of the Superior Court of New Jersey that was not appealed timely to a higher Court.

ADDITIONAL INFORMATION

The Division of Pensions and Benefits is in the process of revising its *Application for Disability Retirement*, related fact sheets and informational materials, and online Retirement Applications and Certifications. Employers will be informed when these revisions become available.

If you have additional questions regarding any of the information provided in this letter, contact the Division's Office of Client Services at (609) 292-7524, or e-mail the Division at: pensions.nj@treas.state.nj.us

Enclosures

(SAMPLE LETTER)
Employer Letterhead

(Date)

Disability Review Unit
Division of Pensions and Benefits
PO Box 297
Trenton, NJ 08625-0297
pensions.nj@treas.state.nj.us

(Name of Employee) is employed by (Name of Employing Location) in the position of (Job Title), is an active member of the (Name of Retirement System) and by filing an application for disability retirement has indicated the he/she can no longer perform his/her assigned duties.

Since we are unable to provide an alternative position with duties capable of being performed by the employee, we have no objection to (Name of Employee) applying for a disability retirement benefit from the (Name of Retirement System).

Sincerely,
(Signature)
(Name of Certifying Officer)
(Title)

(SAMPLE LETTER)
Employer Letterhead

(Date)

Disability Review Unit
Division of Pensions and Benefits
PO Box 297
Trenton, NJ 08625-0297
pensions.nj@treas.state.nj.us

(Name of Employee) is employed by (Name of Employing Location) in the position of (Job Title), is an active member of the (Name of Retirement System) and by filing an application for disability retirement has indicated the he/she can no longer perform his/her assigned duties.

However, an alternative position that may include duties capable of being performed by the employee, (name of the employee) is available.

Title of Position: _____

Retirement System: _____

Description: _____

Sincerely,
(Signature)
(Name of Certifying Officer)
(Title)