

# A Public Employee Case Study: James Brown

Commonwealth of Massachusetts  
Public Employee Retirement Administration Commission

Frank Valeri, *Deputy Director*  
Barbara Lagorio, *Director of Disability*  
Kate Hogan, *Manager of Medical Services*

Jane Carritte, *Clinical Case Manager*  
Patrice Looby, *Nurse Case Manager*  
Regina Manning, *Administrative Assistant*



***Commonwealth of Massachusetts***

**Public Employee Retirement Administration Commission**

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Joseph E. Connarton, *Executive Director*

5 Middlesex Avenue, Suite 304

Somerville, MA 02145

ph 617 666 4446 | fax 617 628 4002 | tty 617 591 8917 | web [www.mass.gov/perac](http://www.mass.gov/perac)

Published by PERAC, 2008. Printed on recycled paper.

Mr. James Brown (a fictional character) is a 50 year old police officer who was approved for accidental disability retirement on October 10, 1999. Mr. Brown worked for the town of Webber and is a member of the Montgomery Retirement System. He was patrolling Route 495 on the evening of December 22, 1992 when he left his patrol car to inspect an area of the roadway. He was struck by an oncoming car. He was taken to the Montgomery Medical Center Emergency room and diagnosed with a fracture of the right upper arm (humerus), left forearm (radius and ulnar), and bilateral hip and thigh fractures (femur).

After being assessed by the emergency room staff, Mr. Brown was taken to the operating room. He had plates inserted in his right arm and forearm and rods inserted in his right and left femur. Mr. Brown was hospitalized for 20 days and then transferred to the Health and Healing Rehabilitation Hospital in Worcester. After months of inpatient rehabilitation the member was finally discharged to home, although as you will see, he continued to have physical therapy for many years.

Mr. Brown continued to have more surgeries for his conditions. In 1994, he had bone graft placement to replace the hardware. In 1997 and 1999, he had additional surgeries to both hips, followed by more physical therapy. He returned to work several times, but due to mobility problems, Mr. Brown was placed on medical leave and finally retired under accidental disability. It was apparent that he was unable to perform the essential duties of a police officer. After retirement, he went on to have bilateral hip replacements in 2000.

Mr. Brown's first Comprehensive Medical Evaluation (CME) was conducted in February 2002. At that time, he was undergoing physical therapy and was found unable to return to work. In June 2003, the member had his second CME review and was again found unable to return to work by his case manager. The supporting medical documentation indicated that he had further surgery one month prior to the CME review and was again undergoing physical therapy.

▷ *Reference: Chapter 32, § 8 (1)(a)*

...Such evaluation shall occur once per year during the first two year period next succeeding the date of his retirement, once in each three year period thereafter, and at any time upon the written request by any such member; provided, however, that an initial evaluation shall occur as soon as possible after October first, nineteen hundred and ninety-six for any member who has been retired for more than two years and has not participated previously in such an evaluation; and provided, further, that such evaluations shall occur not more frequently than once in any twelve month period....

In September 2006, Mr. Brown called his case manager. He indicated that he'd been walking, working out, and had increased his level of activity significantly. His pain level was minimal. Mr. Brown asked if he could be considered for reinstatement to his job. He was asked to submit his request in writing. The PERAC Case Manager received Mr. Brown's request two weeks later. The Nurse Case Manager then had an exchange of letters and conversations with this member

as he started the return to work process.

The PERAC Nurse Case Manager advised him that he must submit all his medical information subsequent to the date of his retirement to PERAC. After reviewing the medical information, and the member's complete disability file, the PERAC Nurse Case Manager scheduled an appointment for Mr. Brown to be examined by a CME Physician on April 4, 2007. Unfortunately, he had a death in the family the week of April 4th so the examination date was rescheduled.

▷ *Reference: Disability Retirement: PERAC's Complete Guide to the Process*  
Section Two: The CME Process (Phase Four: CME Appointment)

Mr. Brown attended his CME examination on April 30, 2007. Four medical tests were conducted. The usual testing done for public safety retirees includes: an audiogram (hearing test), pulmonary function test (breathing test), stress test (exercising on a treadmill for approximately ten minutes with a cardiologist monitoring the cardiac status) and a functional capacity evaluation (physical therapist evaluates physical endurance).

▷ *Reference: PERAC Procedure*

The information from these tests and other non-invasive tests provides the physician who is conducting the examination with significant data to determine if a retiree has any Category A disqualifiers. The conditions are listed in the Commonwealth's Human Resource Department's (HRD) Medical Standards for Municipal Fire Fighters and Municipal Police Officers. If there are Category A conditions, the member is automatically disqualified from returning to service.

During the examination process, the CME physician had to carefully assess Mr. Brown's function following his bilateral hip replacement surgery (performed in 2000). Although this condition had been a Category A condition, according to the Human Resources Division's (HRD) Medical Standards for Municipal Police and Municipal Fire Fighters, the standard changed to a Category B condition July 8, 2005. The determination is now left to the discretion of the examining physician. Mr. Brown's strength, flexibility, and stamina met HRD standards as documented by the CME stress and functional capacity tests.

▷ *Reference: [www.mass.gov/hrd](http://www.mass.gov/hrd)*

PERAC received the CME report on July 25, 2007. The Nurse Case Manager then contacted Mr. Brown and explained the Restoration To Service (RTS) process. The Nurse Case Manager explained that he would be seen by three separate physicians. Physicians comprising the RTS panel must not have examined or treated the member in the past. At least one of the physicians must be a specialist in the medical field related to the condition for which the member retired. The other two specialists are determined by the PERAC Case Manager based on the specifics of the case.

▷ *Reference: PERAC Procedure*

The RTS examinations are conducted by three physicians. Each physician examines the member separately. At least one of the physicians will be a specialist in the medical field related to the condition for which the member retired. The other physician(s) will have medical specialties related to the member's condition(s) as determined by PERAC.

The PERAC Nurse Case Manager scheduled three appointments for the member. As a matter of procedure, appointment letters are sent to the retiree, the retirement board, the employer, and the RTS physician.

Appointments were scheduled with Dr. Learned for August 22, Dr. Strong for August 28, and Dr. Swift for August 30th. Mr. Brown attended all three examinations and found each physician to be competent, professional, and thorough. Mr. Brown documented this when he completed and submitted the "PERAC Physician Medical Examination Questionnaire" to PERAC.

▷ *Reference: PERAC Procedure*

This procedure was established to give members an opportunity to comment on their experience with PERAC physician examinations.

PERAC received all three reports from the physicians in September 2007. The decision was unanimous; all three physicians found Mr. Brown able to perform the essential duties of the job.

▷ *Reference: PERAC Procedure*

September 29, 2000 the Disability Regulations were amended: 840 CMR 10:00: STANDARD RULES FOR DISABILITY RETIREMENT, 10:13 Decision (2)(a), If within two years of retirement a medical panel convened pursuant to M.G.L. c. 32, § 8 unanimously finds that the member is able to perform the essential duties of the position from which he or she retired or so finds following completion of a rehabilitation program the member shall be returned to such position if it is vacant or a similar job within the same department for which he or she is qualified and his or her disability retirement shall be revoked. If such position is not vacant, the last person appointed to that rank or position shall be reduced in rank or position to create a vacancy and the person who was reduced in rank or position shall be placed at the top of the list to fill such rank or position for a two year period. Therefore any disability retiree seeking restoration to service after September 29, 2000, must have a unanimous panel to be restored to service.

The PERAC Case Nurse Manager sent a copy of the Notice of Restoration to Service letter to the member, along with a copy of the CME and RTS reports and a letter explaining his right to appeal. The retirement board received copies of the RTS reports as well as the Notice of Restoration to Service letter, Notice to PERAC of Reinstatement to Duties letter, and a Notice to the Employer

letter. The Notice to Employer letter was signed by the retirement board chairperson and sent by the retirement board to the member's employer. PERAC sent a copy of the Board Notice of Restoration Service letter to HRD.

▷ *Reference: PERAC/HRD Procedure*

In addition to this letter, HRD is notified monthly of retirees found able to return to service.

When an employer has an opening in a civil service position, the employer contacts HRD. At that time, HRD adds disabled retirees who have been deemed able to perform the essential duties of the job to the call list. However, it is not unusual for many months, even years, to pass before a position becomes available in a community and the member is actually restored to active service. In the restoration to service re-evaluation process (RTSR) the PERAC Nurse Case Manager will monitor the member's medical status. Every six months, the member will be asked to complete a health questionnaire and return the document to PERAC. If the questionnaire and/or new medical information suggests any significant change in the member's medical condition, the member will also be re-evaluated by a CME physician. The goal is to assess the retiree's medical readiness to return to work to minimize the possibility of missing or delaying re-training or academy opportunities.

▷ *Reference: Disability Retirement: PERAC's Complete Guide to the Process*  
Section Four: The Restoration to Service Process

In the case of Mr. Brown, a position became available five months after he completed the RTS process. His employer contacted HRD for a copy of the civil service list, which included Mr. Brown's name. The town submitted a re-training program to HRD for Mr. Brown. He successfully completed the re-training program and was reinstated to duty on February 5, 2008.

Once a member is returned to service, the employer must notify the retirement board. The retirement board must return the Notice to PERAC of Reinstatement to Duties form, signed by the retirement board chairperson, to PERAC.

## General Questions for Review:

- How are disabled retirees selected for review?

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- Can the board intervene on behalf of a disabled retiree if he/she is facing a hardship?

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- How many CME reviews are conducted by the PERAC Nurse Case Manager annually?

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- If a disability retiree requests to be returned to service, is the process the same as for those being evaluated from the PERAC Selection List?

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- In the course of a CME evaluation by the PERAC Nurse Case Manager, or CME Physician, are other medical conditions considered or only the condition for which the member retired?

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- How many months does the process generally take?

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- Are there situations where a disability retiree is no longer subject to CME review?

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- How often can a disability retiree request to be returned to service?

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- If a disability retiree has a complaint with a doctor conducting a PERAC examination, what should he/she do?

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- In the RTSR process, why does the disability retiree have to complete a questionnaire every six months?

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- In the RTSR process, what happens if the disability retiree has a change in his/her medical condition?

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- Who has responsibility for oversight of the employer re-training program?

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Somerville, MA 02145

*ph* 617 666 4446

*fax* 617 628 4002

*tty* 617 591 8917

*web* [www.mass.gov/perac](http://www.mass.gov/perac)