

DISABILITY RETIREMENT

FREQUENTLY ASKED QUESTIONS



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Who is eligible to apply for an accidental disability retirement?

Generally, if a member's permanent and total incapacitation prevents him/her from performing the essential duties of his/her position because of a personal injury sustained or a hazard undergone while in the performance of his/her duties at a definite time and place and without serious and willful misconduct on his/her part, he/she is eligible to apply.

However, firefighters, municipal police officers, elected officials, personal staff of an elected official chosen by that elected official, policy-making appointees, or immediate legal advisors of an elected official, and state court judges must apply before reaching the maximum age for their group.

Do applicants for accidental disability retirement have to meet any minimum service or age requirements?

No.

Must the applicant be a member-in-service?

A public employee applying for an accidental disability allowance need not be a member-in-service at the time of application; member-in-service status is required only at time of injury.

Should a member notify the retirement board if he or she is injured on the job?

If a member has an accident on the job, or is exposed to a health hazard, it is critically important that a notice of injury is filed with the retirement board, in addition to the notice filed with the employer. The notice should be filed within 90 days of the occurrence of the injury or exposure. This establishes the time, place, and occurrence of the accident or hazard for future reference. If he/she later becomes disabled, and more than two years have passed since the accident or hazard, it is imperative that the member has an official record in order to seek accidental disability benefits. The notice of injury serves as the official record. Workers' Compensation records or official department records may also be utilized.

What form should the member use to apply for disability retirement?

Whether the member is applying for accidental or ordinary disability retirement or both (because of uncertainty about which is appropriate for his/her circumstances) the member must file a *Member's Application for Disability Retirement* with the retirement board. Unless authorized by the Public Employee Retirement Administration Commission (PERAC), the member may file no more than one application for disability retirement for the same condition or injury within any twelve-month period.

Where does the member obtain a *Member's Application for Disability Retirement* and guidance in how to complete it?

The retirement board will provide the member with a copy of the application. The retirement board staff will assist the member throughout the process and will respond to his/her questions as things progress. The retirement board or member may also download a copy of the application form from the PERAC Home Page on the Internet: www.mass.gov/PERAC

What information must the member include in the *Member's Application for Disability Retirement*?

The *Member's Application for Disability Retirement* is a multi-page form. In order to consider the application complete, the member must provide:

- A statement of the member's job duties
- The member's employment history
- Statements about the member's background, qualifications, and recent physical activities
- The reason for accidental disability (if relevant)
- Information about incident reports & witnesses
- Information about filing for a grievance, Workers' Compensation, or Section III F benefits
- Information about emergency medical treatment
- A listing of all hospitals and medical facilities from which the member sought treatment within the last five years
- The name and address of the member's personal physician
- The name and address of the member's attorney representing him/her in the disability application process
- The name and address of relevant insurance carriers
- Authorizations for release of insurance records, medical records, tax records
- The member's regional medical panel selection choice

The member must complete the *Member's Application for Disability Retirement* in its entirety and file it with the retirement board. Until all of the required information has been submitted, the retirement board cannot assign a date of application, which will be very important in determining the effective date of retirement and the retirement allowance date.

Upon receipt of the disability retirement application, the retirement board will request written information from the employer on the *Employer's Statement* pertaining to a member's application for disability retirement. The retirement board will ask the personal physician to complete a form and to provide a written report that contains a diagnosis of the condition, and information about the member's medical treatment and history. The physician will be asked to assess the member's ability to perform the essential duties of his/her job, and to discuss whether or not the disability is likely to be permanent. Please note that if the member chooses to do so, the member may personally convey the form to his/her physician. The board will request copies of records from the other physicians, hospitals, and insurance companies that the member has identified in the application.

What time frames govern the disability retirement application and determination process?

The regional medical panel should meet within 60 days of being appointed by PERAC to conduct its examination. The member will be given 14 days' notice of the scheduled examination.

The regional medical panel will report their findings and recommendations to PERAC within 60 days of completing their examination(s).

Within 5 days of receipt of a properly completed medical report, PERAC will forward the report to the retirement board.

Within 30 days of receipt of the report, the retirement board will notify the member of the panel's findings and provide the member with a copy of all of the documents completed by the regional medical panel. The retirement board has the option of requesting further information or a clarification from the regional medical panel if they determine that it would be helpful.

If the determination of the regional medical panel precludes retirement for the disability claimed, the retirement board may either deny the application or ask PERAC for a new regional medical panel if they believe that circumstances warrant it.

If PERAC declines to schedule a new examination, the retirement board will deny the application.

If the determination of the regional medical panel permits retirement for the disability claimed, the retirement board shall determine whether or not to approve the application. A hearing may be held on any disability retirement application, and must be held upon any request of the member.

If a hearing is scheduled, the board must give the member at least 30 days' notice of the time and place for the hearing and the issues involved.

The retirement board's decision about the member's eligibility for disability retirement must be made no later than 180 days after the member files a completed application, unless PERAC grants an extension.

If the retirement board approves the application, it will be transmitted to PERAC for final action. PERAC must act on the application within 30 days of its receipt.

If the retirement board denies the application, the board will advise the member of his/her right to appeal the decision.

When will a medical panel be appointed to examine the member?

When the retirement board determines that an application for accidental or ordinary disability retirement is complete, the board (which meets at least once a month) may petition PERAC to appoint a three member, independent regional medical panel, paid for by PERAC, to examine the member.

No physician who has already examined or treated the member, except as part of a prior disability medical panel, can be appointed to a panel to examine him/her.

May physicians who are associated with each other serve together on a medical panel?

PERAC will not appoint physicians who have a direct and substantial financial interest in each other's practice, unrelated to their service on PERAC appointed medical panels, to serve with each other on a medical panel.

The statute provides that physicians who provide services through a disability review organization are not "associated" unless they have a direct and substantial financial interest in the profit and loss of the organization.

Do the three physicians who are appointed to a member's medical panel have to conduct a joint examination?

The member has the right to request three separate single physician examinations when he/she files a disability application. Such separate examinations can be scheduled by PERAC to take place on three separate days in three separate locations. If the member does not request separate single examinations at application filing time, PERAC will generally schedule a joint examination. In instances where a joint examination cannot be convened in a timely manner, PERAC may schedule separate single examinations instead.

The member may request separate examinations at any time prior to a joint examination date, but PERAC will not ordinarily consider requests for separate examinations less than 48 hours prior to a scheduled joint examination.

Will the examining physicians each write her/his own report?

For separate evaluations, yes. However, one report is completed on behalf of all physicians in the case of a joint panel.

What questions must be addressed by the members of a regional medical panel?

The members of the regional medical panel must answer whether or not they find that the member is unable to perform the essential duties of the job, and whether such incapacity is likely to be permanent. In the case of an accidental disability retirement, the physicians must also state whether or not the disability is such as might be the natural and proximate result of the accident or hazard upon which the retirement application is based. The physicians must submit a written report in support of the conclusions that they reach.

Do all three physicians on a regional medical panel have to agree about the findings?

At least two of the three members must agree. If the third physician doesn't agree with the other two members, he or she must submit a minority report in support of his/her own conclusions.

Who schedules regional medical panel examinations?

PERAC's Disability Unit staff members schedule medical panel examination(s) for disability retirement applicants. The member will be given at least 14 days' written notice in advance of any appointment date(s), time(s), and location(s).

Under what circumstances may a member request that a regional medical panel examination be rescheduled?

The member may request that an examination be rescheduled only for compelling personal reasons including, for example, a death in the family or the member's own hospitalization. In the event a member is unable to attend a scheduled examination, the member should notify PERAC immediately.

If the member's request to reschedule the examination hasn't been approved, and the member fails to keep the appointment, the member may have to reimburse PERAC for the cost of the appointment.

Who may attend the medical panel examination(s)?

The principal purpose of the examination is to discuss and evaluate the physical condition or mental health of the member. Attendance at the examination shall be limited to the member, the medical panel physician(s),

the member's physician and attorney, and the employer's physician and attorney. The member may permit the presence of other individuals, provided their presence will not disrupt the examination.

It is the member's responsibility to notify his/her physician and attorney of the date(s), time(s), and location(s) of the examination.

The member's physician and the employer's physician may answer questions from the panel, but they will have no vote in the panel's final determination.

Is a disability retirement applicant required to attend the regional medical panel examination?

In general, the applicant must be present for the examination. However, in a limited set of circumstances, exceptions are permitted. In accordance with PERAC guidelines, the requirement for a regional medical panel examination can be satisfied by the submission of records to be reviewed by three physicians appointed by PERAC, provided the following conditions are met:

- The application must be a voluntary disability retirement application filed by the member, not an involuntary disability retirement application filed by the employer.
- The completed application must have been on file with the retirement board for at least 15 days.
- The member must reside more than 150 miles from Boston.
- The member must waive, in writing, his or her right to attend the examination.
- The member's employer must waive, in writing, his or her right to attend the examination.
- The member's physician must provide a statement detailing the medical reason, accompanied by supporting medical documentation, that would prevent the member from traveling to an examination.

What materials does a member have to submit to his/her retirement board when requesting the appointment of a regional medical panel for an examination based on a review of the records?

The member must submit a completed *Member's Application for Disability Retirement*, as well as all supportive documentation for the condition listed on the application.

After PERAC has scheduled the regional medical panel examination of records, PERAC's Disability Unit will notify the retirement board and require the board to submit complete medical records and all other required documents to the medical panel physicians in the same manner as if the member was being examined.

Is disability retirement automatically precluded if a member dies before a regional medical panel can examine him/her?

The retirement board may ask for a posthumous medical panel examination of records if the member's completed disability retirement application had been on file with the retirement board for at least 15 days prior to the member's passing.

What happens to the application if the medical panel does not find him/her to be disabled?

The retirement board considers the report(s) of the regional medical panel and determines whether or not to approve the application. While the regional medical panel report is a very important element in the retirement board's consideration, it is only part of the information that the retirement board reviews. If the medical panel finds the member not to be disabled it may not approve the application.

Does the retirement board conduct a hearing?

The retirement board may hold a hearing on any disability retirement application, but must hold a hearing upon the request of a member.

Retirement board hearings are conducted in accordance with PERAC's Standard Rules for Disability Retirement, 840 CMR 10.12. These regulations cover notice, discovery, and conduct of the hearing, evidence, and subpoenas.

What happens if both the regional medical panel and the retirement board find a member to be disabled?

PERAC's staff will review the disability application. PERAC may remand an application to the board for further action within 30 days of its receipt if PERAC finds the board's decision to have been made upon unlawful procedure, unsupported by substantial evidence, arbitrary and capricious, or a result of fraud or misrepresentation.

When the application has been approved by PERAC, or if no action is taken by PERAC within 30 days, the retirement board will notify the member that the member's application for disability retirement has been granted.

Can PERAC approve an ordinary disability retirement for members who applied for accidental disability?

PERAC may approve an ordinary disability retirement in light of the retirement board's findings, the regional medical panel's report, and other evidence. The member may be retired for ordinary disability, provided that is the preference of the member, and the member meets the other eligibility requirements for ordinary disability.

Does a department head have the right to file an application to retire a member?

A department head may file an application to retire a member (Group 1, Group 2 or Group 4 members) upon the basis of disability (or superannuation). The minimum creditable service and age requirements that are applied to applications filed by members also apply to retirement applications initiated by an employer.

How does the process begin, and does the member have any immediate recourse if they feel they should not be retired?

The department head will initially file a form with the retirement board. A copy of this form must be sent to the member simultaneously. Within 15 days of receiving his/her copy of the application, the member may request a hearing before the retirement board if he/she is a member-in-service of Group 1, Group 2, or Group 4 who has attained age 55 and has completed 15 or more years of creditable service, or if the member hasn't attained age 55 but has completed 20 or more years of creditable service.

Will the involuntary application process include a medical examination and evaluation?

If the member is not entitled to an initial hearing and/or the board accepts the appropriateness of the disability application, the involuntary process will continue through the same medical evaluation process that governs a voluntary application for a disability retirement.

Any Group 1, Group 2, or Group 4 member who has been involuntarily retired and has attained age 55 and

completed 15 or more years of creditable service, or any member so classified who has not attained age 55 but who has completed 20 or more years of creditable service, or any such member who is a veteran and has been granted 10 or more years of creditable service, may seek review of such action in the district court in the district in which he/she resides within 30 days after the certification of the retirement board's decision.

Is a beneficiary eligible to receive an accidental death benefit, if a retiree's death is directly related to the cause for which he/she retired?

If a member dies after retirement from causes found by the retirement board to be the natural and proximate result of the injury or hazard that was the basis of the accidental disability retirement, the surviving spouse may petition the retirement board for an accidental death benefit.

Is the retirement board required to request a medical panel review in the case of an accidental death?

The retirement board has several options when addressing the medical issues concerning an accidental death. The retirement board may: (1) review the medical records, the death certificate, and all other pertinent information, and approve the application without the review of a physician; or (2) submit a *Request for Appointment of a Regional Medical Panel (Accidental Death)* to PERAC, and PERAC will schedule a single physician to review the records; or (3) appoint an independent physician to conduct a review of the medical records. The retirement board must submit their findings of fact and all other required information with their *Transmittal to the Commission*.

What are some of the most common reasons PERAC would not approve and return, or "remand", a disability application to a retirement board?

The most common reason for a PERAC remand is that information that must be included with a completed application is missing.

What information needs to be included with a completed application?

840 CMR 10.13(1)(a) describes the documents that must be submitted to PERAC in connection with an approval of a disability retirement. These required materials include: the certificate or certificates of the medical panel; the certificate of the applicant's physician; all descriptions of the accident (accidental disability retirement application only); all descriptions of the member's duties; all documents prepared by the member in connection with the application; all documents prepared by the employer in connection with the application; and all documents prepared by the retirement board in connection with the application.

Are there any other documents that must be included, in addition to those described in the regulations?

Yes. G.L. c. 32, § 7 requires that a notice of injury be filed with the board within 90 days of its occurrence in cases where the injury is sustained more than 2 years before the filing of the application. That notice must be included in the application materials. Proof of receipt of Workers' Compensation or an injury report on file in the official records of an employer may also suffice to satisfy the notice requirement in some cases.

What documents would be prepared by the member in connection with an application?

The member would complete and sign the form entitled *Member's Application for Disability Retirement*. In addition, as noted elsewhere, the member would be responsible for having his or her doctor complete the *Treating Physician's Statement Pertaining to a Member's Application for Disability Retirement*.

What documents would be prepared by the employer in connection with an application?

It is the responsibility of the employer to prepare and sign *The Employer's Statement Pertaining to a Member's Application for Disability Retirement*.

Are there any other issues involving the Member's Application and the Employer's Statement?

Yes. These are both two-sided documents. Frequently, retirement boards fail to copy both sides. The result is that PERAC receives only half of the information needed.

Are there any special issues that arise in accidental death cases?

Yes. When a retiree dies, it is important that the retiree's information be included on the *Disability Transmittal to the Commission*. Often, a retirement board will include his or her spouse's information instead.

When PERAC is forced to remand a case due to missing information, what information is most often missing?

In an accidental disability retirement case, the document most often missing is the injury report. In a case involving a presumption (i.e., the heart, lung, and cancer laws), the document most often missing is proof that the member passed a physical upon entry into service, or subsequent to entry, which failed to reveal any evidence of the condition for which retirement is sought.

Other than missing documents, what is the most common reason for PERAC to remand an application?

There are many reasons that may force the remand of an application to a retirement board. PERAC must remand an accidental disability retirement application, for example, if there is not sufficient evidence that the member was injured "while in the performance of" and "as a result of" his/her duties.

Does PERAC remand a certain number of cases each month?

Absolutely not. PERAC only remands a case if it finds the decision of the board to be made upon unlawful procedure, unsupported by substantial evidence, arbitrary and capricious, or a result of fraud or misrepresentation.

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