12th Annual **EMERGING** I S S U E S **FORUM**

Everything You Wanted to Know About Disability Retirement*

*and we are often asked

Kate Hogan, Manager Medical Services | PERAC **Judith Corrigan**, Deputy General Counsel | PERAC **Patrice Looby**, Nurse Case Manager | PERAC

Hogan Conference Center College of the Holy Cross, Worcester, MA

September 15, 2016



COMMONWEALTH OF MASSACHUSETTS Public Employee Retirement Administration Commission Five Middlesex Avenue, Suite 304 | Somerville, MA 02145 Phone: 617-666-4446 | Fax: 617-628-4002 TTY: 617-591-8917 | Web: www.mass.gov/perac





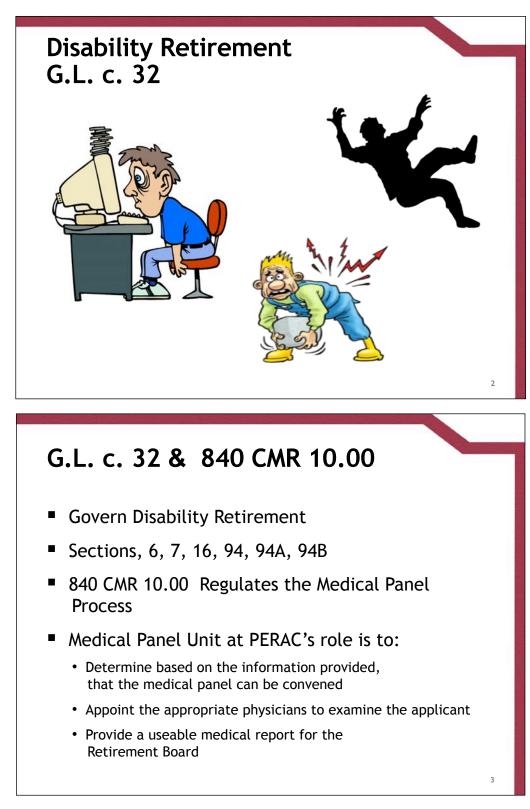
Everything You Wanted to Know About Disability Retirement*

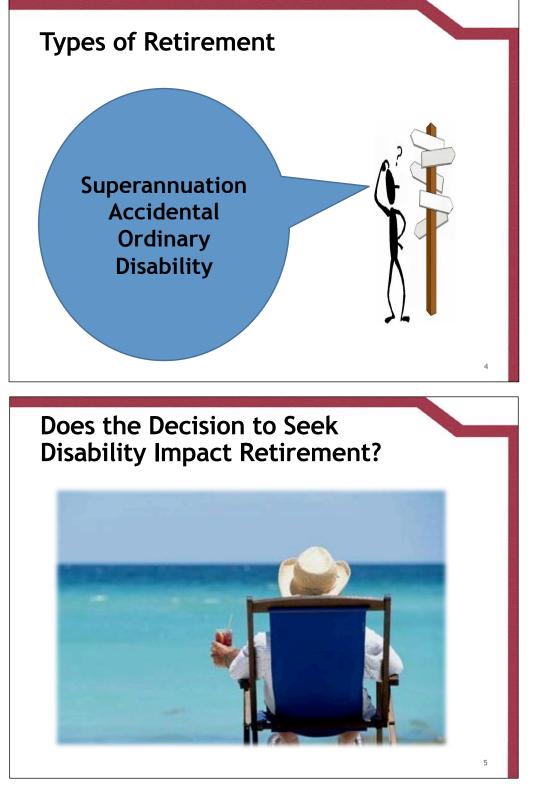
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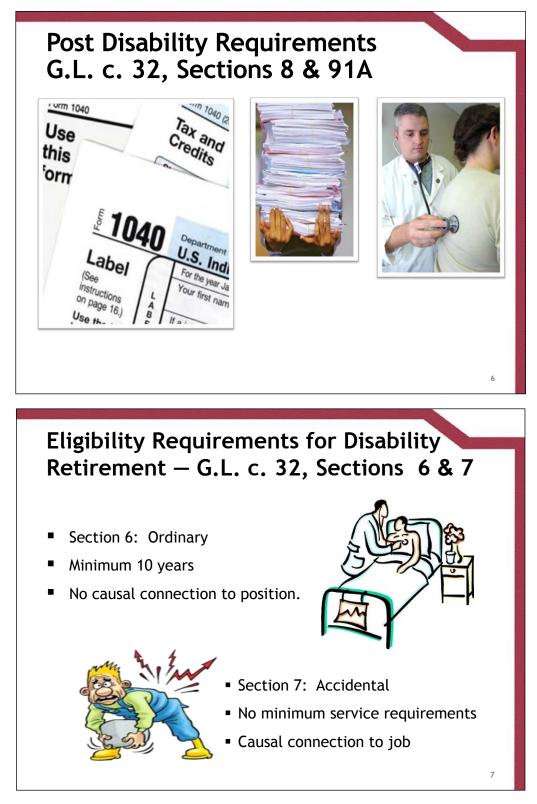
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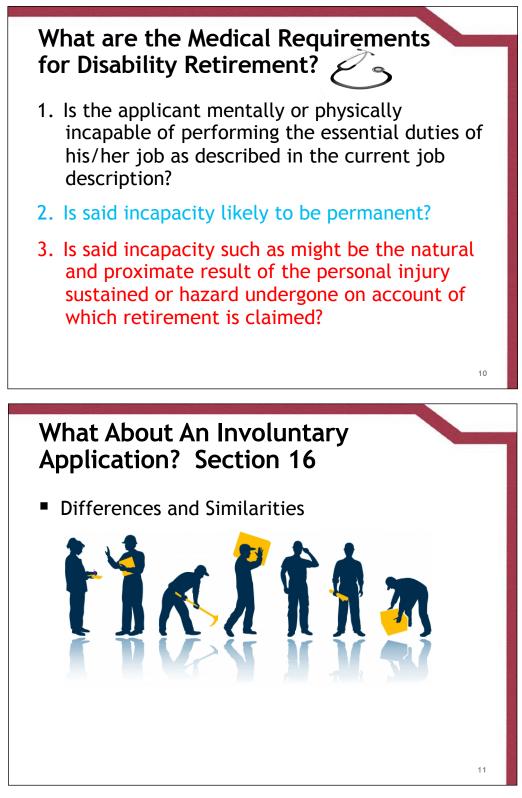
The Application Process – How Does Someone Apply?

 Member of a Retirement System contacts their Retirement Board.

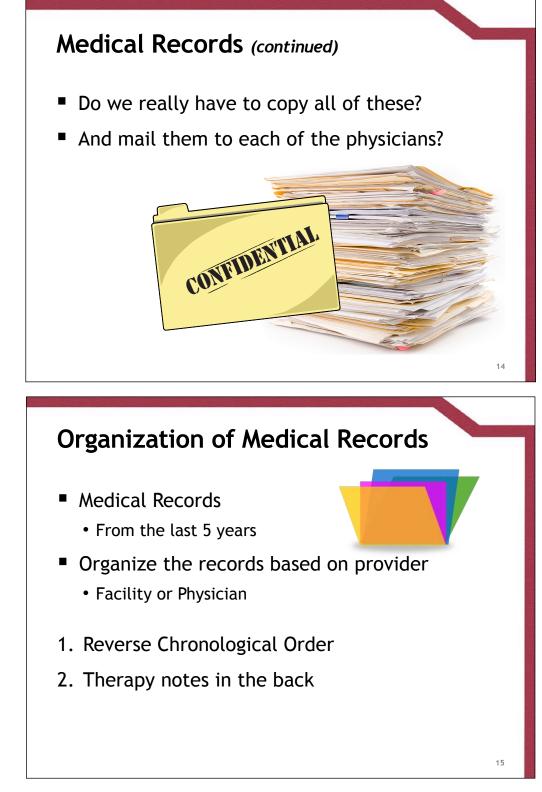


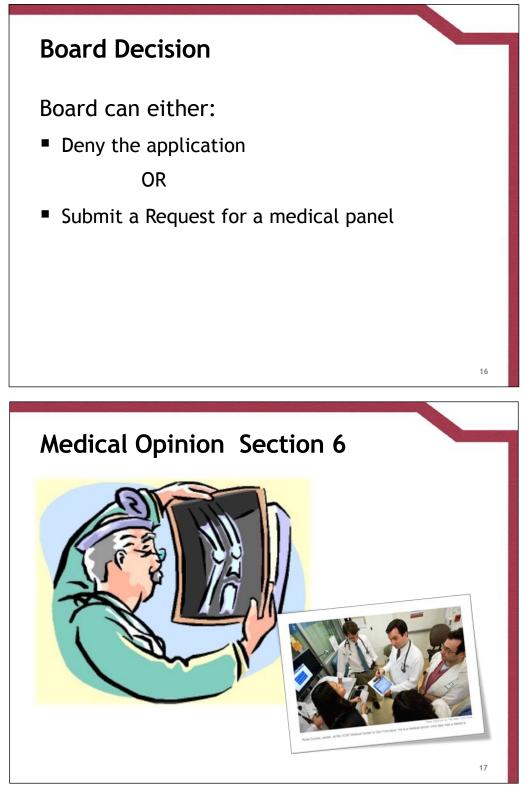
What Does the Application Contain?

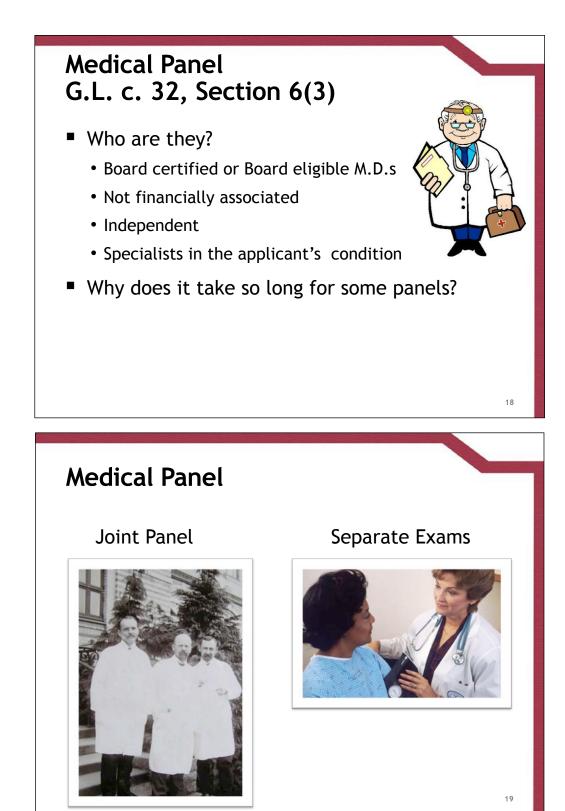
- Member's application
 - Employment History
 - Release Forms
- Treating Physician's statement
 - Supports application
 - Must answer all 3 questions
- Employer's Statement
 - Job description
 - Injury Reports
- Medical Records
 - 5 years

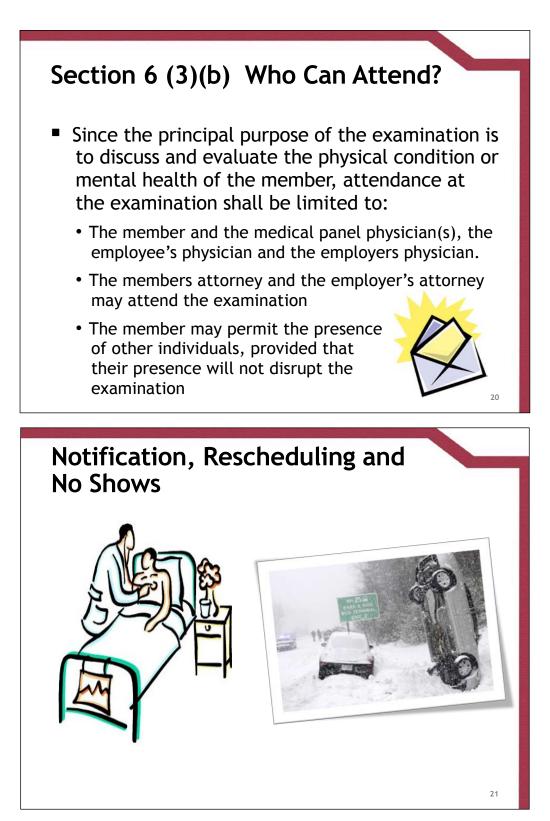


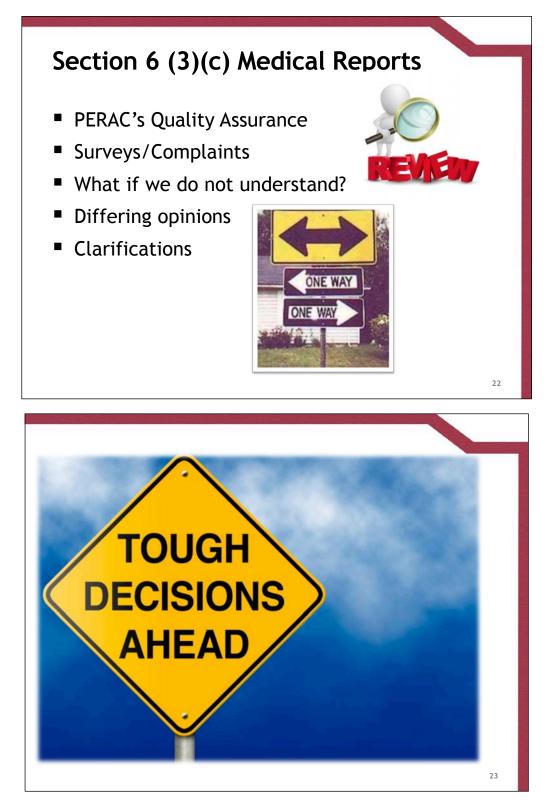












What Happens Next?

- There is a negative medical panel
 - The Retirement Board must deny the application**
- There is a positive medical panel
 - The Retirement Board, weighing all the medical and non medical evidence, may approve or deny the application.



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And Then?

- If the application is denied, the member is informed and given his or her appeal rights to CRAB or to the District Court. The retirement board informs PERAC of its decision.
- If the application is approved, the retirement board sends all application materials into PERAC for its review.

NOTES:

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PERAC'S Review Authority

- Accidental disability and ordinary disability
 - G.L. c. 32, Section 21(1)(d)
- Accidental death
 - G.L. c. 32, Section 21(4) & Plymouth County Retirement Association v. Commissioner of Public Employee Retirement, 410 Mass. 307 (1991).



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Grounds for Remand G.L. c. 32, Section 21(1)(d)

A remand may occur if PERAC finds a decision of the retirement board is:

- (1) Made upon unlawful procedure;
- (2) Unsupported by substantial evidence;
- (3) Arbitrary and capricious; and
- (4) A result of fraud or misrepresentation.

Sample Worksheet

DUE:	ACC	ORD		
Disability Transmittal:	WC Signa	111F tures: Y N	15	no
DOI:				
Statement of Facts found b	y Retirement Bo	ard: yes NO	minim	al
Certificate of Medical Pane	el:			
YYY YYY YYY				
Treating Physician's Stater YYY	ment			
YYY		date report filed:		
YYY All Descriptions of Membe	ers' Duties:	date report filed:		
YYY All Descriptions of Member Injury Report doi: The Employer's Statement lap: doi:	ers' Duties: : (signed)		ated)	
YYY All Descriptions of Member Injury Report doi: The Employer's Statement lap: doi: 111F/WC: Member's Application for c: doi:	ers' Duties: : (signed) Disability Retire	ement (signed and d	ated)	

The Disability Transmittal: Page 1

Disability Transmittal to the Commission

Updated August, 2003

Retirement Board: Please place your address and phone number here. >				
Member's Last Name		First	M.I.	Retirement Board
xxx - xx - Social Security #	Accidental Disable (Please check one)	ility Ordinary Disability		Accidental Death

Retirement Board Decision

To the Commission:

We hereby certify that we have received the application of the above named member for a disability retirement/accidental death benefit and have voted to grant the benefit in accordance with the provisions of M.G.L. chapter 32, section ______. Pursuant to G.L. c. 32, § 21(1)(d), § 21(4) and PERAC regulations 840 CMR 10.13(1)(A) and 840 CMR 9.02, we are hereby forwarding our decision to you for your review.

If this application is based on a presumption under G.L. c. 32, § 94 or § 94A or § 94B, we made the following findings of fact. (By placing a check mark in the box to the left of the finding, the board certifies that it has made the finding of fact.):

	The member successfully passed a physical examination upon entry to service or subso which failed to reveal evidence of such a condition.	equent thereto,
	There is no contrary evidence sufficient to overcome the applicable presumption.	
	Other causal factors related to the member's physical or mental condition did not cor member's disability.	tribute to the
	No event other than the accident or hazard upon which the disability retirement is cla to the member's disability.	imed contributed
lf the	e member is claiming the presumption contained in Section 94B:	
	He(she) did respond to calls in the line of duty that would have involved the inhalation to noxious fumes or poisonous gases.	of or exposure
	He(she) has served in a position that renders him(her) eligible for the application of the for at least five years and regularly responded to calls of fire during some portion of h	• •
	The condition upon which the presumption is based was discovered within five years on which the member actively served.	of the last date
	Chair	Member
	Member	Member
	Member	Date of Vote
СОМІ	MONWEALTH OF MASSACHUSETTS PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION WEB WWW.MASS.GOV/PERAC	

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The Disability Transmittal: Page 2

Disability Transmittal to the Commission		2
Member's Last Name First		x - xx - cial Security #
Name of Unit Job Title/Group Date of Birth Date of Retirement Date of Membership		
Years: Months: Yes No Total Creditable Service Veteran Status		
Annual rate of regular compensation on date of injury, or		
Average annual rate of regular compensation for 12-month period	last received	
In case of an accidental disability/accidental death (other than in check appropriate provision:	presumptic	on cases),
Notice to board within 90 days?		
Accident occurred within 2 years preceding date of application?		
Group 4 member: is the record of the injury on file in the official records	of his/her dep	partment?
Information required in connection with G.L. c. 152 (Workers' G.L. c. 41, § 111F (Injured On Duty)	Compensati	on) and
Covered by the Workers' Compensation Act?	Yes	No
Date compensation first received in connection with this accident?		
At what weekly rate?		
What period covered?		
Receiving G.L. c. 41, § IIIF benefits?	Yes	No
G.L. c. 32, § 15 Has the Retirement Board been made aware that this employee has been officially or charged with misappropriation of funds from his/her employer or convicted of related to his/her office or position? If yes , please provide documentation.	-	or No

Ordinary Disability Only

- The most common reason for the remand of an ordinary disability application is the lack of the requisite number of years of service.
- Most boards require 10 years of service.
- Four still require 15 years: Blue Hills, Leominster, Malden and Minuteman.
- Veterans are eligible for an ordinary disability retirement with 10 years of service, regardless of whether they are members of these four boards.



- A positive medical panel certificate is a condition precedent for the award of accidental (and ordinary) disability retirement.
- A retirement board may decide that a medical panel's negative answer on causation was based on an erroneous standard in a PRESUMPTION case only.
- A negative certification as to incapacity and/or permanence will always be fatal to a claim, and a negative certification as to causation will be fatal to all non-presumption claims and many presumption claims.

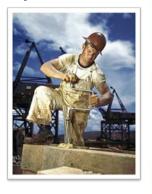
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Still Working

To qualify for accidental or ordinary disability retirement benefits, a member must be "unable to perform the essential duties of his job..."

- A person continuing to work without accommodations does not qualify.
- Ditto a person working full throttle right up until maximum age for their group, then putting in an application for accidental disability retirement.



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No Proof of Physical

A member is eligible for the Heart, Lung and Cancer presumptions, assuming other eligibility requirements are met, "if he successfully passed a physical examination on entry into such service, or subsequently successfully passed a physical examination, which examination failed to reveal any evidence of such condition..."

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Physical Contains Evidence of Pre-existing Condition

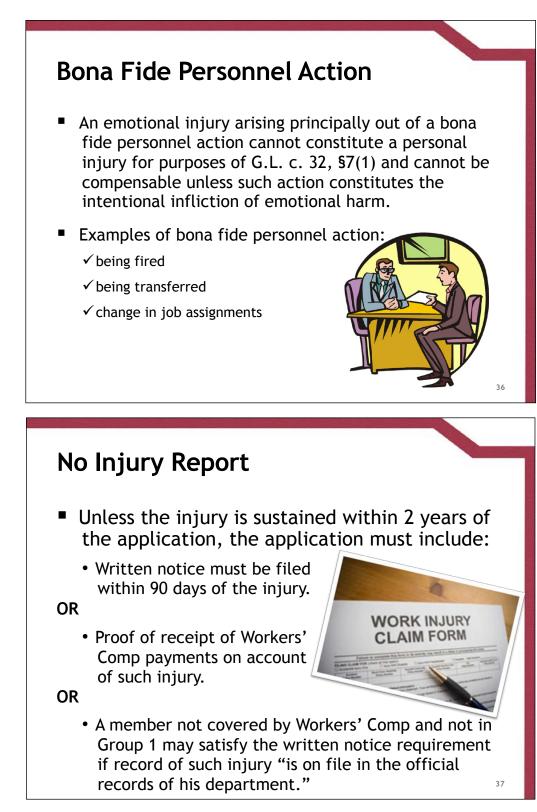
- For Heart Law, physical reveals <u>any</u> evidence of hypertension or heart disease.
- For Lung Law, physical reveals <u>any</u> evidence of asthma or COPD or other lung condition.
- This hasn't yet come up in the Cancer Law, but the requirement of a clean physical remains.

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Presumption Overcome

- Member has a congenital heart or lung defect.
- Member has no "hypertension or heart disease." (Heart Law).
- Member serving in a position for fewer than 5 years. (Cancer Presumption).
- Retired member discovers cancer more than 5 years after retirement. (Cancer Presumption).



What Is NOT an Injury Report

- Affidavits recounting events of long ago written today, or more than 90 days after event.
- Workers' compensation *settlements*.
- Newspaper articles.
- Typewritten pieces of paper with no letterhead and no indicia of authenticity.

Not Injured "in the performance of his [or her] duties"

No to:

- ✓ Coworker horseplay
- Performing a duty outside your job description
- Being injured going to, from, or in the bathroom
- ✓ Being injured going to, from, or at lunch or on a break
- ✓ Traveling to or from work
- Not performing an actual job duty when injured



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Some Bathroom Cases

Boyle v. PERAC, CR-99-879 (2000) (Petitioner merely standing at sink in the restroom when he blacked out, fell and hit his shoulder obviously not performing any job performance related activity at the sink); Doucette v. PERAC, CR-08-239 (2010), (Petitioner injured after she used the bathroom facilities and was on her way to the sink to wash her hands not in the performance of her job duties); Iarossi v. Boston Retirement Board, CR-08-591(2001) (Petitioner injured heading toward the sink after using the lavatory not injured while performing a job duty); and Fortier v. Teachers' Retirement Board, CR-02-730 (2003) (Member heading to urinal to relieve himself when he slipped and fell not injured in the performance of his duties and not entitled to accidental disability retirement).

In the Actual Performance of His or Her Duties

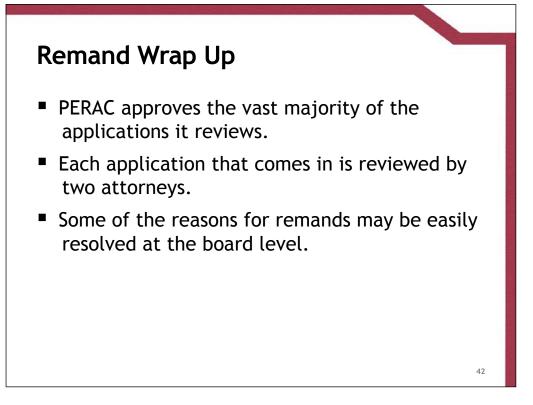
- Have to be performing an actual job duty at the time of injury
- Have to be on duty when injured
- Must be a nexus between the claimant's injury and the actual performance of his or her job

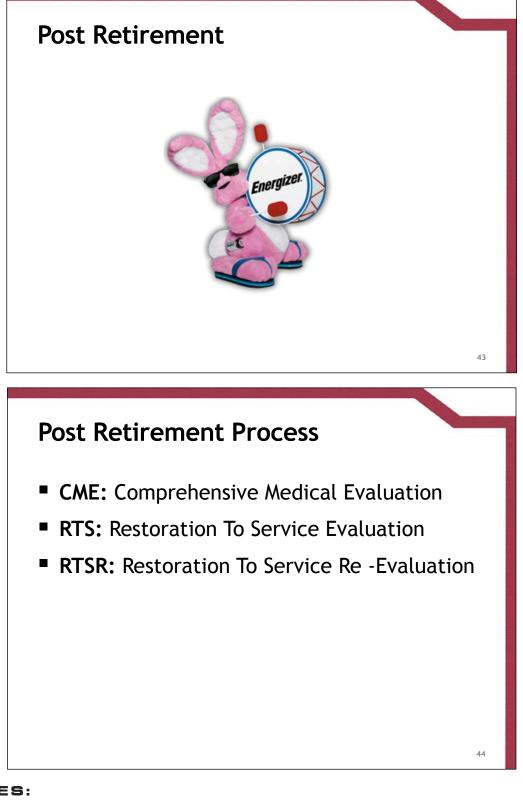
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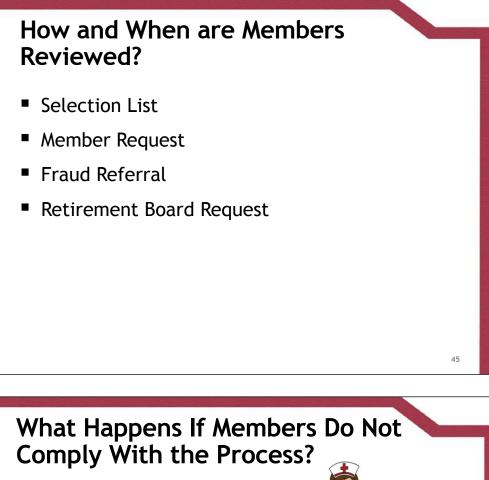
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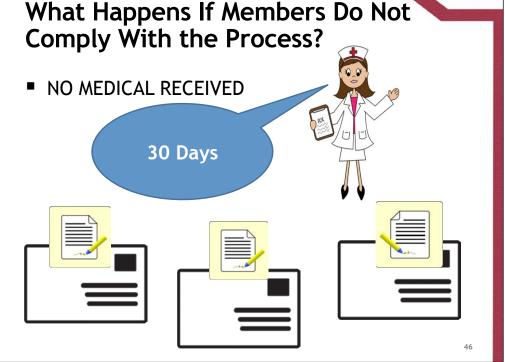
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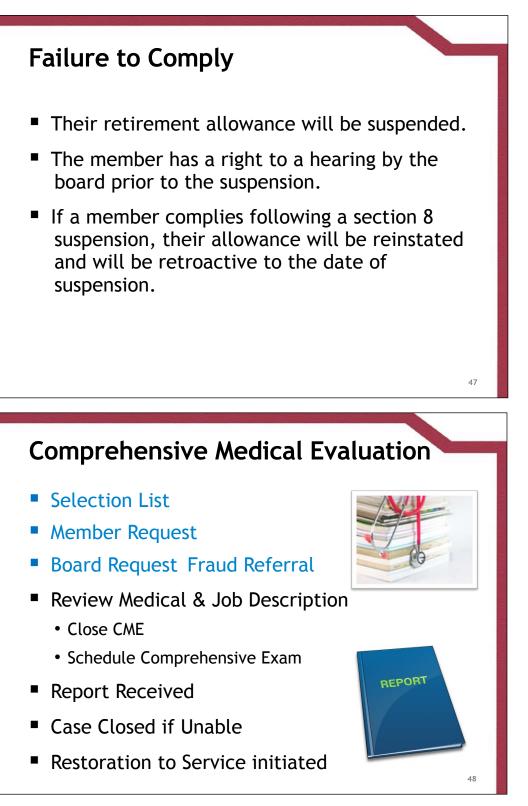
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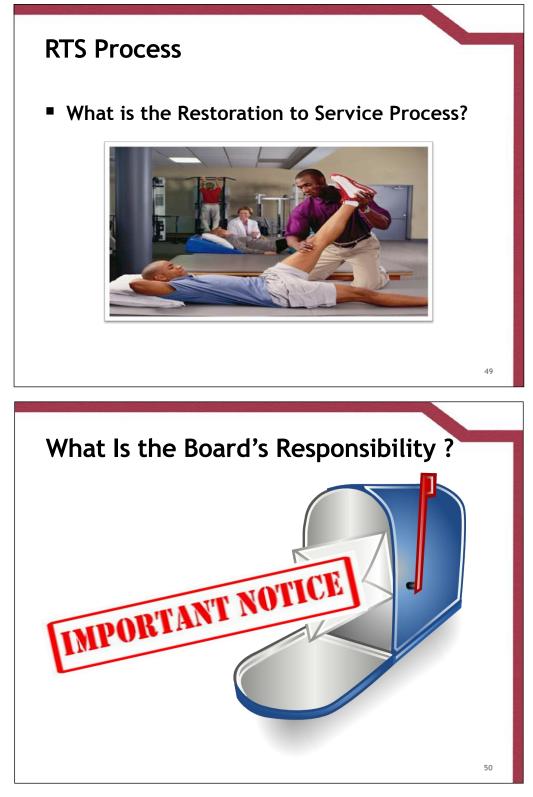


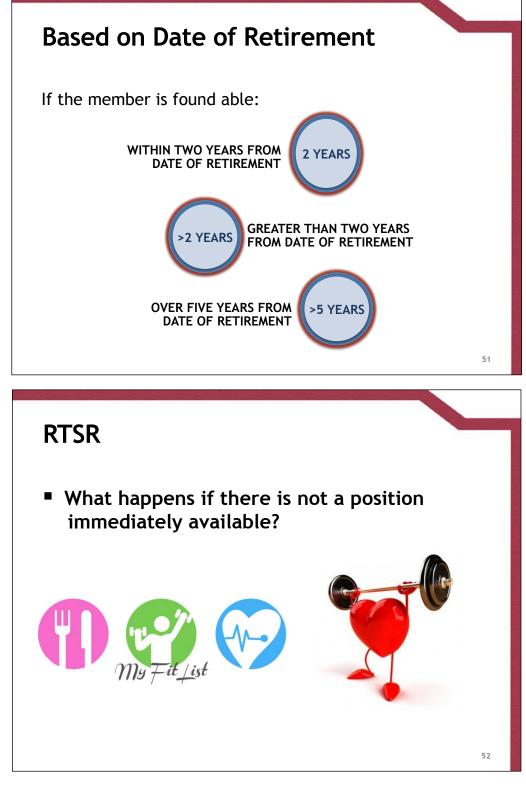


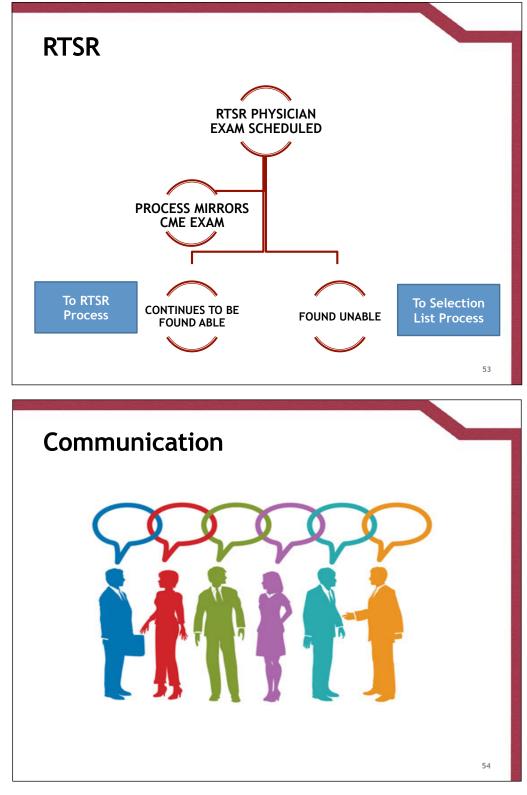


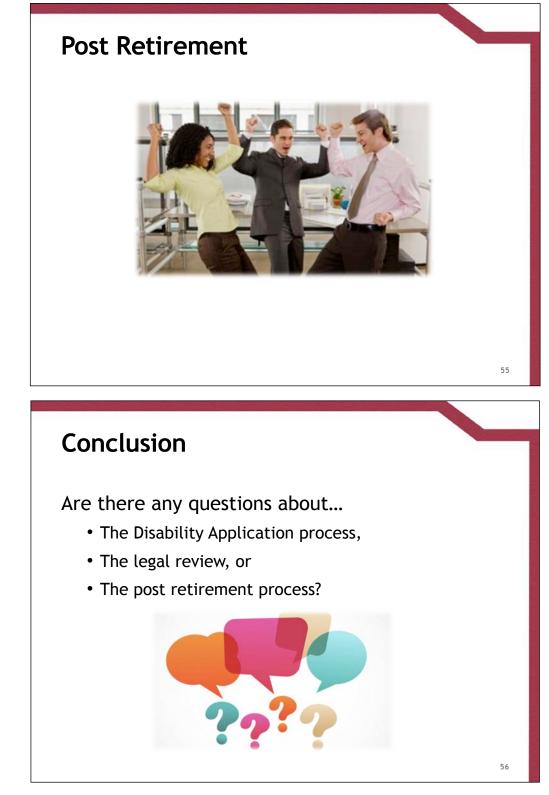














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