

## MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Disability Regulations (840 CMR 10.00)

DATE: March 28, 2016

In August of 2014 PERAC began the process of amending the regulations concerning the disability retirement system (840 CMR 10.00). After four (4) hearings and multiple reviews by the Commission, the revised disability regulations **became effective March 11, 2016**.

The regulations were amended to bring them up to date with regard to legislative changes as well as to clarify various issues that have presented in recent years. Much of the revisions concerned making the regulations as clear as possible and involved clerical changes. This memo will address the substantive changes that were made to the regulations.

In Section 10.02 the Commission inserted a provision to provide that a retirement board should make every effort to expedite a member's application for disability when that member is not receiving Workers' Compensation or Line of Duty benefits.

Section 10.05 clarifies that the Employer and the Member are parties to the disability application. The new regulation now references the Employer rather than the Employer and the department head. In many instances the department head will act as the Employer representative for disability-related matters.

Section 10.10 specifies who may attend the medical panel examinations. As specified by Chapter 32 the member, the member's physician and attorney as well as the employer, the employer's physician and attorney may attend the decision making portion of the medical examination. The retirement board is not permitted to send a representative to the medical examination. Section 10.10 has also been amended in paragraph 8 to state that medical records must be provided to the board, which will be responsible for providing them to the medical panel. Members may not provide records directly to the examining physician at the medical panel examination.

Section 10.11 has been amended to address situations in which the board would like to request clarification from the medical panel. The board shall send any clarification request to PERAC which will forward it to the medical panel. Clarifications shall no longer be sent directly to the



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doctors from the board. The regulations will now require that the medical panel shall respond within 60 days, previously there was no timeframe specified. If the board wishes to seek further clarification, after the initial request and response, they should submit a request to PERAC, along with the proposed clarification, which will determine if further clarification is warranted. If PERAC denies a request for further clarification, PERAC shall notify the board in writing of the reasons for the denial.

Section 10.12 sets the procedures used for hearings by the retirement board. This section was amended with two provisions regarding hearings involving emotional disability cases, such as PTSD. In emotional disability cases the hearing officer shall have the discretion to limit attendance during the proceedings. The hearing officer shall also have the authority to require questions be posed through the hearing officer to the witness/member. These provisions address the challenging circumstances that occur when an application is based upon an emotional disability and allows the hearing officer latitude to protect the interests of the member, employer, and board.

Section 10.13 pertains to the decision to grant a disability and requires that the disability transmittal that is sent to PERAC must be signed by all of the voting members of the board. This allows PERAC during its review to determine how many board members voted. A further change requires that a board member may not participate as a board member or vote on their own application.

In section 10.16 we have inserted the statutory provision that allows PERAC to waive the required 91A filing for a member who was retired for disability for at least 20 years and has not reported earnings for 10 years.

Section 10.23 is a new section which addresses how an application for disability by a PERAC employee will be handled. This section specifies that PERAC will act only as the Employer and the medical panel selection process and the legal review will not be conducted by PERAC. Further, PERAC will not keep an electronic file on a PERAC employee but will rather only maintain a paper file and such limited information as necessary to track CME and earnings issues.

If you have any questions, please contact this office.

Enclosure