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
Everything You Wanted to Know About Disability Retirement*

*and we are often asked

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

PERAC

September 15, 2016
Disability Retirement
G.L. c. 32

G.L. c. 32 & 840 CMR 10.00

- Govern Disability Retirement
- Sections, 6, 7, 16, 94, 94A, 94B
- 840 CMR 10.00 Regulates the Medical Panel Process
- Medical Panel Unit at PERAC’s role is to:
  - Determine based on the information provided, that the medical panel can be convened
  - Appoint the appropriate physicians to examine the applicant
  - Provide a useable medical report for the Retirement Board

NOTES:
Does the Decision to Seek Disability Impact Retirement?

Types of Retirement

Superannuation
Accidental
Ordinary
Disability

NOTES:
Eligibility Requirements for Disability Retirement — G.L. c. 32, Sections 6 & 7

- Section 6: Ordinary
  - Minimum 10 years
  - No causal connection to position.

- Section 7: Accidental
  - No minimum service requirements
  - Causal connection to job
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 are the Medical Requirements for Disability Retirement?

1. Is the applicant mentally or physically incapable of performing the essential duties of his/her job as described in the current job description?

2. Is said incapacity likely to be permanent?

3. Is said incapacity such as might be the natural and proximate result of the personal injury sustained or hazard undergone on account of which retirement is claimed?

What About An Involuntary Application? Section 16

- Differences and Similarities

NOTES:
Presumptions
Sections 94, 94A and 94B

Medical Records

NOTES:
Medical Records *(continued)*

- Do we really have to copy all of these?
- And mail them to each of the physicians?

Organization of Medical Records

- **Medical Records**
  - From the last 5 years
- **Organize the records based on provider**
  - Facility or Physician

1. Reverse Chronological Order
2. Therapy notes in the back
Board Decision

Board can either:

- Deny the application
  
  OR

- Submit a Request for a medical panel
Medical Panel
G.L. c. 32, Section 6(3)

- Who are they?
  - Board certified or Board eligible M.D.s
  - Not financially associated
  - Independent
  - Specialists in the applicant’s condition

- Why does it take so long for some panels?

Medical Panel

Joint Panel

Separate Exams

NOTES:
Section 6 (3)(b) Who Can Attend?

- Since 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 and the medical panel physician(s), the employee’s physician and the employers physician.
  - The members attorney and the employer’s attorney may attend the examination
  - The member may permit the presence of other individuals, provided that their presence will not disrupt the examination

Notification, Rescheduling and No Shows

NOTES:
Section 6 (3)(c) Medical Reports

- PERAC’s Quality Assurance
- Surveys/Complaints
- What if we do not understand?
- Differing opinions
- Clarifications

NOTES:
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.

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.
PERAC’S Review Authority

- Accidental disability and ordinary disability
  - G.L. c. 32, Section 21(1)(d)

- Accidental death

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

<table>
<thead>
<tr>
<th><strong>DUE:</strong></th>
<th><strong>ACC</strong></th>
<th><strong>ORD</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Disability Transmittal:</td>
<td>WC</td>
<td>111F</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DOI:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statement of Facts found by Retirement Board:</td>
<td>yes</td>
<td>NO</td>
</tr>
</tbody>
</table>

**Certificate of Medical Panel:**
- YYY
- YYY
- YYY

**Treating Physician’s Statement**
- YYY

**All Descriptions of Members’ Duties:**

**Injury Report**
- doi: date report filed: 

*The Employer’s Statement: (signed)*
- lap: 
- doi: 
- 111F/WC: 

*Member’s Application for Disability Retirement* (signed and dated)
- c: 
- doi: 
- 111F/WC: 

*Pre-employment physical OR Letter from Chief*
- date: 

**JAC OK**
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

xxxx - xx -  □ Accidental Disability  □ Ordinary Disability  □ Accidental Death

Social Security # (Please check one)

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 subsequent thereto, which failed to reveal evidence of such a condition.

☐ 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 contribute to the member’s disability.

☐ No event other than the accident or hazard upon which the disability retirement is claimed contributed to the member’s disability.

If the 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 of or exposure to noxious fumes or poisonous gases.

☐ He(she) has served in a position that renders him(her) eligible for the application of the presumption for at least five years and regularly responded to calls of fire during some portion of his(her) service.

☐ The condition upon which the presumption is based was discovered within five years of the last date on which the member actively served.

_________________________________ Chair  ________________________________  Member

_________________________________ Member  ________________________________  Member

_________________________________ Member  ________________________________  Date of Vote
### Disability Transmittal to the Commission

<table>
<thead>
<tr>
<th>Member’s Last Name</th>
<th>First</th>
<th>M.I.</th>
<th>Social Security #</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Name of Unit</th>
<th>Job Title/Group</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Date of Birth</th>
<th>Date of Retirement</th>
<th>Date of Membership</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Years:</th>
<th>Months:</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Total Creditable Service</th>
<th>Veteran Status</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Annual rate of regular compensation on date of injury, or</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Average annual rate of regular compensation for 12-month period last received</th>
</tr>
</thead>
</table>

In case of an accidental disability/accidental death (other than in presumption cases), check appropriate provision:

- 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 department?

Information required in connection with G.L. c. 152 (Workers’ Compensation) and G.L. c. 41, § 111F (Injured On Duty)

- 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, § 111F benefits? Yes No

G.L. c. 32, § 15

Has the Retirement Board been made aware that this employee has been officially investigated for or charged with misappropriation of funds from his/her employer or convicted of any crime related to his/her office or position? Yes No

If yes, please provide documentation.
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.

Lack of a Positive Panel

- 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.
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.

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...”
Physical Contains Evidence of Pre-existing Condition

- For Heart Law, physical reveals any evidence of hypertension or heart disease.
- For Lung Law, physical reveals any 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.

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).
Bona Fide Personnel Action

- An emotional injury arising principally out of a bona fide personnel action cannot constitute a personal injury for purposes of G.L. c. 32, §7(1) and cannot be compensable unless such action constitutes the intentional infliction of emotional harm.

- Examples of bona fide personnel action:
  - being fired
  - being transferred
  - change in job assignments

No Injury Report

- Unless the injury is sustained within 2 years of the application, the application must include:
  - Written notice must be filed within 90 days of the injury.
  - Proof of receipt of Workers’ Comp payments on account of such injury.
  - A member not covered by Workers’ Comp and not in Group 1 may satisfy the written notice requirement if record of such injury “is on file in the official records of his department.”
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

NOTES:
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

NOTES:
Remand Wrap Up

- PERAC approves the vast majority of the applications it reviews.
- Each application that comes in is reviewed by two attorneys.
- Some of the reasons for remands may be easily resolved at the board level.
Post Retirement Process

- **CME**: Comprehensive Medical Evaluation
- **RTS**: Restoration To Service Evaluation
- **RTSR**: Restoration To Service Re-Evaluation
How and When are Members Reviewed?

- Selection List
- Member Request
- Fraud Referral
- Retirement Board Request

What Happens If Members Do Not Comply With the Process?

- NO MEDICAL RECEIVED

30 Days

NOTES:
Failure to Comply

- Their retirement allowance will be suspended.
- The member has a right to a hearing by the board prior to the suspension.
- If a member complies following a section 8 suspension, their allowance will be reinstated and will be retroactive to the date of suspension.

Comprehensive Medical Evaluation

- Selection List
- Member Request
- Board Request Fraud Referral
- Review Medical & Job Description
  - Close CME
  - Schedule Comprehensive Exam
- Report Received
- Case Closed if Unable
- Restoration to Service initiated

NOTES:
RTS Process

- What is the Restoration to Service Process?

What Is the Board’s Responsibility?

IMPORTANT NOTICE

NOTES:
Based on Date of Retirement

If the member is found able:

- **WITHIN TWO YEARS FROM DATE OF RETIREMENT**
  - 2 YEARS

- **GREATER THAN TWO YEARS FROM DATE OF RETIREMENT**
  - >2 YEARS

- **OVER FIVE YEARS FROM DATE OF RETIREMENT**
  - >5 YEARS

**RTSR**

- What happens if there is not a position immediately available?

**NOTES:**

[Blank space for notes]
RTSR

RTSR PHYSICIAN EXAM SCHEDULED

PROCESS MIRRORS CME EXAM

To RTSR Process
CONTINUES TO BE FOUND ABLE
FOUND UNABLE
To Selection List Process

Communication

NOTES:
Post Retirement

Conclusion

Are there any questions about...

- The Disability Application process,
- The legal review, or
- The post retirement process?
12th Annual EMERGING ISSUES FORUM

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