

Demystifying the Disability Pension Process

A guide to understanding the process and best practices for
Municipal Officials for facilitating the disability process



*Employees' Retirement System of Rhode
Island*

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Types of Disability Benefits

➤➤ Accidental or Ordinary Disability



Ordinary Disability Benefits

▶ *What is an ordinary disability pension?*

- A benefit available to active members who are **physically or mentally** unable to perform their job due to illness or injury that **did not occur at work**.

▶ *Who is eligible for an ordinary disability pension?*

- Active members with **at least 5 years of service**
 - 3 years must have been worked consecutively (back to back) with their employer.
- Members who are **already eligible for a service pension** retirement are **not eligible** for an ordinary disability pension.
- Members must apply for a disability pension *prior* to terminating employment.



Ordinary Disability Benefits

- ▶ *How much is an ordinary disability pension benefit?*
- An ordinary disability pension benefit is **based on a member's schedule type, years of service, and final average salary**.
 - Members with between 5 and 10 years of service will be given credit for 10 years.
- Disability pension benefits are **subject to offset of workers compensation or settlement** or award from any action for damages for personal injuries against the state or municipality.



Accidental Disability Benefits

- ▶ *What is an accidental disability pension?*
 - A benefit available to members who are **physically or mentally unable** to perform their job as a result **of an accident that happened at work**.
 - Injuries that are the result of willful negligence or misconduct on the part of the member or are due to age or length of service may disqualify a member from receiving an accidental disability pension.
- ▶ *Who is eligible for an accidental disability pension?*
 - Active members **under the age of 65** who sustained a disabling injury from a job-related accident or illness.
 - Members must apply for a disability pension *prior* to terminating employment.



Accidental Disability Benefits

- ▶ *Applications **must be received** by ERSRI:*
 - For Police and Fire members **within 18 months** of the disabling accident, aggravation, or reinjury.
 - For Municipal members, **within 5 years** of the disabling accident.
 - No aggravation or reinjury provision in RIGL for Municipal Employees.
 - For state and teacher members, **within 5 years** of the disabling accident; or **within 3 years of a reinjury** or aggravation.



Accidental Disability Benefits

- ▶ *How much is an accidental disability pension benefit?*
 - For MERS, Police and Fire:
 - **66 2/3% of compensation at retirement** for members who are permanently and totally disabled from the performance of duty.
 - For State Employees and Teachers:
 - **50% of compensation** at retirement for members who are permanently and totally disabled from their current job **but are able** to perform **other types** of work.
 - 66 2/3% of compensation at retirement for members who are permanently and totally disabled from all work.
 - Disability pension benefits **are subject to offset of workers compensation or settlement or award** from any action for damages for personal injuries against the state or municipality.



Disability Application Process



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Disability Application Process

- ▶ For both Ordinary and Accidental applications the following are required:
 - An Application must be completed by either the member, employer, Power of Attorney (POA), etc.
 - Applicant's Physician's Statement (completed by the physician treating member for their disabling condition)
 - Employer Disability Statement
 - Job Description (for the position held when injury, illness occurred)



Additional Information for Accidental Disability

- ▶ The application must be accompanied by an accident report and a physician's report certifying to the disability.
- ▶ The application must certify the **definite time, place and conditions** of the duty performed by the member which resulted in the alleged disability.
- ▶ Work History
- ▶ Health Claims History
- ▶ 3 years medical records prior to the accident



Disability Application Process

- ▶ An applicant for an Ordinary or Accidental Disability Pension **must be examined by three independent physicians** engaged by the Retirement Board and “*such investigation as the retirement board may desire to make*”.
- ▶ Payment for these examinations and any test required as a result of the examinations are borne by the Retirement Systems.
 - It is the **responsibility of the applicant to contact these independent physicians** to make an appointment for examination.
- ▶ Once the examination is concluded, neither the applicant nor his/her counsel can have any further communication with any of the independent physicians, any such communication may warrant the Retirement Board to deny the application.



Disability Subcommittee Review and Adjudication



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The Retirement Board and Authority

- ▶ The Employees' Retirement System of Rhode Island, and the Municipal Employees' Retirement System of Rhode Island are governed and **administered by the Retirement Board**.
- ▶ The Board is composed of **fifteen members** in accordance with state law who by virtue of their duties are to be considered fiduciaries of the system.
- ▶ The Governance Structure of the Board is designed to facilitate the operation of the systems and has **four (4) standing committees**.



Disability Subcommittee

- ▶ The primary purpose of the Disability Subcommittee is to review applications for ordinary and accidental disability benefits, and **make recommendations to the Board for the disposition of claims.**
- ▶ The Subcommittee consists of five members of the Board.
- ▶ They conduct hearings regarding disability benefits claims, in accordance with the Rhode Island **Administrative Procedures Act** §42-35-1 et seq.



Disability Subcommittee Review

- ▶ ERSRI uses a **two-tier** review process which has been “*likened to a funnel.*”
- ▶ At the **first** level of review, the Disability Subcommittee “*sits as if at the **mouth of the funnel***” and analyzes the evidence, issues, and live testimony.

Melvin v. Karpinski, 2013 R.I. Super. LEXIS 77 (R.I. Super. Ct. 2013) (quoting Environmental Scientific Corp. v. Durfee, 621 A.2d 200 (R.I. 1993)).



Disability Subcommittee Review

- ▶ At the **second** level of review, the “**discharge end**” of the funnel, the full Retirement Board “*is not privileged to hear or witness the broad spectrum of information*” that the Disability Subcommittee received first-hand. See *id.*
- ▶ Therefore, the “*further away from the mouth of the funnel that an administrative official is . . . the more deference should be owed to the fact finder.*”
- ▶ **Determinations of credibility** by the Disability Subcommittee, for example, should not be disturbed unless they are “***clearly wrong.***”



Disability Application Adjudication

- ▶ For a member to receive an Ordinary Disability Pension, the Disability Subcommittee must determine that a member is **physically or mentally incapacitated** from the performance of duty **and ought to be retired**.
- ▶ For an Accidental Disability Pension, the Disability Subcommittee must make a determination that the applicant is physically or mentally incapacitated for the performance of service as a **natural** and **proximate** result of an **accident sustained** while in the performance of duty.



Accidental Disability and Proximate Cause

- ▶ Two-prong test for determining “*Proximate Cause*” for adjudicating the application:

1. “**But for**” the accident, the member would not have become permanently disabled;

and

2. The permanent disability must be the “**natural and probable**” consequence of an accident.



Consideration by the Disability Subcommittee

- ▶ The Disability Subcommittee will vote to **recommend approval or denial, or may postpone** the application for the submission of additional material.
- ▶ They may require the **applicant to appear** before the Disability Subcommittee to answer questions regarding his or her application for disability benefits.
- ▶ **Failure to respond** to a request for information within 30 days may result in a recommendation of denial of the application by the Disability Subcommittee.



Request for Reconsideration

- ▶ Any member aggrieved by a decision of the Retirement Board recommendation to deny his or her application for Ordinary or Accidental Disability Benefits, **may request that the application be reconsidered** by the Disability Subcommittee.
- ▶ Upon completion of the reconsideration hearing, the Retirement Board will notify the applicant if the decision is reversed or if its decision is to **uphold the recommendation to deny** the application and notice of such final decision will **constitute the final administrative action** for all purposes pursuant to R.I. Gen. Laws § 42-35-1, et. seq.



Important Information

- ▶ A member must apply **before any termination or separation from employment.**
- ▶ They **can apply** for a disability with ERSRI/MERS **in addition to** Workers Compensation and/or Social Security Disability.
- ▶ If your employee is out due to illness, especially terminal illness, let them know they can apply for an ordinary disability retirement.
- ▶ Timing is very important! **All members**, including terminal members are **required to be examined prior** to death in order to qualify for a disability benefit.



Employer and Employee Responsibilities



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Employer Responsibilities

- ▶ If the employee applies for disability, it is important to keep the application moving and avoid unnecessary delay:
 - Payment to the Employee could be delayed.
 - For employees receiving IOD there could be increased costs to the employer.
- ▶ Employers can apply on behalf of the employee.
- ▶ No requirement that the employee be terminated as part of the application process.
- ▶ Don't terminate employee until you know that the retirement system has received the application for disability.



Employer Responsibilities

- ▶ Completing and returning the *Employers Disability Statement form* in a timely manner, answering all questions and providing requested documents.
 - Be advised that by virtue of applying for a disability, the employee is authorizing release of his/her information.
 - **HIPAA does not apply** because neither the employer nor the retirement system is a healthcare provider.
 - If you can't respond you should provide a written explanation why.
- ▶ For an accidental disability, provide ALL injury or accident reports on file.



Employer Responsibilities

- ▶ Completes the *Employer Certification of Retirement and Final Wages* form with date of termination and salary information once employee is approved.
- ▶ Provide the date of termination, which **is determined between employer and employee, not ERSRI.**
 - It can't be prior to the date the disability application is received by ERSRI and is not necessarily date of approval.
- ▶ Provide Salary for an ordinary disability is the 5 highest consecutive years.



Employer Responsibilities

- ▶ For an accidental disability provide the **contractual salary for the year** in which the applicant terminates employment.
 - The employee may not have actually earned the contractual
 - Longevity is included but only for the period of employment
- ▶ If provided with a Salary Verification and/or Teacher Day Count form, please make every effort to complete the form in a timely manner.
- ▶ RIGL requires compliance by employers to provide information requested by the ERSRI. See §§45-21-33, 36-9-21 and 16-16-23.



Employee Responsibilities

- ▶ Request an application from ERSRI and submit the completed application to ERSRI prior to termination.
- ▶ Complete all required information. Incomplete applications may result in a delay in processing.
- ▶ Sign and date all medical records releases and provide to ERSRI in a timely manner.
- ▶ Provide all forms to treating physicians and their employer in a timely manner.



Employee Responsibilities

- ▶ Make all three Independent Medical Exam (IME) appointments immediately upon receipt of the assignments from ERSRI, complete the IME information form and return to ERSRI.
- ▶ Keep IME appointments. If they need to reschedule, contact the physician asap.
 - **Employees may be responsible for fees for missed appointments.**
- ▶ Once they have undergone the IME, they are not to contact the physician.



Employee Responsibilities

- ▶ If approved, ERSRI will provide their employer with the *Employer Certification of Retirement and Final Wages* form.
 - Must be signed by the employee and the employer.
 - If needed, a Salary Verification form may be requested.
- ▶ Work with their employer to determine a date of termination. ERSRI **does not** determine the date of termination.
- ▶ If they have an attorney for their disability or workers compensation benefits, they should contact him/her before taking any action in order to avoid jeopardizing any other benefits to which they may be entitled.



Employee Responsibilities

- ▶ Contact their employer for health insurance information.
- ▶ Provide ERSRI with workers compensation, lawsuits, settlement information and marital status (*if a QDRO is applicable*) upon request.
- ▶ Employees should plan accordingly! Disability Pension benefits can take 2 – 3 months to process.
- ▶ Comply with Disability Compliance requests in order to avoid jeopardizing their pension benefit.



ERSRI Responsibilities

- ▶ **ERSRI is responsible for obtaining** medical records directly from the physicians, completed forms, employment information and employer disability form etc.
- ▶ **Assign member for three independent medical examinations** and notify member and follow up with member if no response within 30 days of assignment.
- ▶ **Notify member and employer** of outcome following Board decisions.
- ▶ Send out and review annual *Continuing Statements of Disability* until member reaches minimum service retirement age.



Annual Continuing Statement

- ▶ To ensure compliance with RIGL, ERSRI requests medical and income information from the disability retirees.
- ▶ Annually the Retirement Board may require the retiree, under the minimum service retirement age, to undergo a medical examination.
- ▶ If the examination indicates that the retiree is able to engage in a gainful occupation, the employer will be notified to place the retiree's name on appropriate lists of candidates for hire.



Annual Continuing Statement

- ▶ ***Can a member work once approved for a disability pension?***
 - Yes, however they cannot do the same type of work they retired from, and their pension benefit may be adjusted based on their earnings from post retirement work.
- ▶ ***How much money can a member earn before their retirement allowance is adjusted?***
 - They are permitted to make the difference between the amount they would have earned had they still been employed in the same position and their pension benefit. The employer will be asked to provide this information.



Annual Continuing Statement Example

- ▶ Member retired as a teacher in 2014.
- ▶ Would have earned \$70,000 had they been employed as a teacher in 2018.
- ▶ For 2018, their disability retirement allowance was \$50,000.
- ▶ For 2018, they would be permitted to make \$20,000 (\$70,000 – \$50,000) before their disability retirement allowance is adjusted.



Annual Continuing Statement

- ▶ ***What happens if the member does not submit an Annual Continuing Statement?***
 - If they do not provide ERSRI with a completed *Annual Continuing Statement* including all supporting documentation, their disability retirement allowance may be suspended until the statement is received and analyzed.



Pending Regulation Changes



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- ▶ Considered changes to ERSRI Regulation 1.9 to help expedite disability process include:
 1. Adjusts time to **amend application** – can only be done prior to IME assignment
 2. Removes the list of required documents for application from the regulation and instead directs to a **policy** allowing the Subcommittee ability to adjust as necessary
 3. Requires applicant to make IME appointment upon receipt of contact information from ERSRI
 4. Applicant has **60 days to complete IME's** – unless Applicant can show that the delay is not the result of Applicant's actions
 5. If the application is approved the applicant has **30 days** to complete all necessary paperwork for benefit or the application will be rejected



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