

**Item 6.b.ii.**

**Disability Retirement Policy & Procedures**

## **POLICE OFFICERS' RETIREMENT SYSTEM**

### Sec. 33.62. - BENEFIT AMOUNTS AND ELIGIBILITY.

#### (E) *Disability Retirement Provisions.*

- (1) (a) For purposes of this system, "total and permanent disability" shall mean an injury, disease or condition which totally and permanently incapacitates a member, either physically or mentally, from his regular and continuous duty as a police officer. A "total and permanent disability" arising directly from the performance of service to the City by a member shall be considered to be a service incurred disability. A "total and permanent disability" arising from any other cause or source, other than as modified below, shall be considered to be a nonservice incurred disability. A member shall not be entitled to receive a disability retirement benefit from the system if the disability is a result of:
  - (1) Excessive and habitual use of drugs, intoxicants or narcotics;
  - (2) Injury or disease sustained by the member while willfully and illegally participating in fights, riots, civil insurrections, or while committing a crime;
  - (3) Injury or disease sustained by a member while serving in any of the armed forces;
  - (4) Injury or disease sustained by the member after his employment with the City has been terminated.
- (b) A member shall not receive a service incurred disability benefit for injury or disease sustained by the member while working (either as an employee or through some other contractual arrangement) for anyone other than the City, performing a job function the same as or related to the member's City job function, and arising out of the scope of any other employment or contractual arrangement, excepting injuries sustained by members while performing duties on behalf of the City and while within the City's jurisdiction although those injuries occurred at an outside employer's job site. In addition, a member shall not be entitled to receive a disability retirement benefit from the system on the basis of any condition which existed prior to the member's employment or which was evidenced during the member's pre-employment physical.
- (2) *Application for Benefits.* In order for the Board to consider a member's request for disability retirement benefits, the member must apply in writing to the Board. Upon receipt of proper application by the Board of Trustees, the Board of Trustees shall arrange for a physical examination of the applicant by the medical board. A further condition for receipt of disability retirement benefits from the system is that the applicant must apply for and diligently pursue disability benefits from social security and workers' compensation. Written proof of application must be submitted to the Board of Trustees. Failure of the applicant to qualify as being disabled under either the social security or workers' compensation laws may be considered by the Board of Trustees in review of that member's application or recovery from disability.
- (3) *Medical Board.* When a member submits proper application for a disability retirement benefit, the Board of Trustees shall designate a medical board to be composed of at least one physician. The medical board shall arrange for and pass upon all medical examinations required under the provisions of this subchapter, shall investigate all

essential statements or certificates made by or on behalf of a member in connection with an application for disability retirement and shall report in writing to the Board of Trustees its conclusions and recommendations upon all matters referred to it. The payment of those services shall be determined by the Board of Trustees.

- (4) *Determination of Disability.* All questions relating to eligibility for initial payment or continuance of disability benefits shall be determined by the Board of Trustees, taking into consideration the recommendations of the medical board and any other evidence of which the Board of Trustees may avail itself. The general steps which the Board of Trustees shall follow in its determination shall be as listed below, provided however, that the Board of Trustees may, in its discretion, alter or modify these steps:
  - (a) Determine whether the member's application is proper;
  - (b) If application is for a nonservice incurred disability, determine whether the ten (10) years of continuous service requirement has been met;
  - (c) Based on all evidence submitted to the Board of Trustees, determine whether the applicant satisfies the definition of disability, including the absence of listed exclusions;
  - (d) Determine whether the disability is to be considered a service-incurred disability or a nonservice disability, taking into consideration F.S. ch. 185.34.
  - (e) Establish a date of disability. This date may be the date of injury causing the disability, the date when the member could no longer perform his regular and continuous duties, the date when his sick pay and vacation pay are exhausted or such other date as determined by the Board of Trustees.
- (5) *Disability Retirement Benefits.*
  - (a) *Eligibility.* Each member shall be eligible for service incurred disability benefits, regardless of length of continuous service. Each member who completes ten (10) years of continuous service prior to becoming disabled shall be eligible for nonservice incurred disability benefits.
  - (b) *Initial Amount of Service Incurred Disability Benefit.* The greater of sixty (60) percent of the member's average monthly earnings in effect on the date of disability or the member's accrued pension benefit.
  - (c) *Amount of Nonservice Incurred Disability Benefit.* Two (2) percent of average monthly earnings in effect on the date of disability for each year of continuous service; provided, however, the minimum shall not be less than twenty-five (25) percent of average monthly earnings.
  - (d) *Terms of Payments.* Disability benefits shall commence on or as of the first day of the month coincident with or next following the date of disability, as established by the Board of Trustees, and shall continue to be paid on the first day of each subsequent month until the death or recovery of the disability retiree. The same survivorship percentages which apply to normal retirement benefits shall also apply to disability retirement benefits.
  - (e) *Eligibility for Other Benefits.* In the event that a member applying for disability benefits is also eligible for either early or normal retirement, the Board may, upon the request of the member, pay the early or normal retirement benefit instead of a disability retirement benefit.
- (6) *Report by Disability Retiree.*

- (a) Each person currently receiving disability retirement benefits and each person who first qualifies for disability retirement benefits shall be required to submit to the Board of Trustees, upon a request by the Board of Trustees, a signed and notarized report which includes, but is not limited to:
  - (1) A medical report from the disability retiree's physician stating whether the retiree is still totally incapacitated to perform the regular and continuous duties of a police officer shall be submitted to the Board. The required physician's statement must be dated within four (4) months of the request.
  - (2) A statement to the effect that the disability retiree understands that if the report is incomplete or incorrect, his disability benefits may be suspended or discontinued.
- (b) In the event that the required reports are not submitted to the Board on a timely basis, or are incomplete or incorrect, the Board may, in its discretion, suspend or discontinue the disability retirement benefits.
- (7) *Disability Affidavit.* No member otherwise eligible to receive disability benefits shall be paid those benefits unless and until that member files a disability affidavit with the Board on a form furnished by the Board. By the disability affidavit, the prospective retiree shall affirm that he is acquainted and familiar with the terms and conditions of his disability retirement. In particular, he shall acknowledge the authority of the Board to require him to undergo periodic future physical examinations in order to determine whether he has recovered from disability.
- (8) *Authority for Reexamination.* Each person who first qualifies for or is then receiving disability retirement benefits on or after the effective date of this subchapter shall be subject to periodic reexamination by a medical board selected by the Board of Trustees to determine if the disability has ceased to exist.
- (9) *Recovery from Disability.*
  - (a) In the event a member who has been retired on a disability benefit regains his health and is able to perform his duties in the Police Department, the Board shall discontinue the pension; and further, the City shall, subject to budget and qualification of the member for the position, offer the member a position with the City as a police officer.
  - (b) If a member shall resume his employment with the City as a police officer then he may pay into the Fund an amount equal to the aggregate contributions plus interest at a rate to be determined by the Board (computed upon his annual earnings at the time of his disability retirement) he would have been required to make hereunder, as determined by the Board, during the period of his disability retirement had he not been retired, and shall thereupon receive creditable service for the period of the disability retirement. In any event, that member shall retain credit for the period of continuous service to the date of disability.

**DELRAY BEACH POLICE OFFICERS' RETIREMENT SYSTEM  
DISABILITY HEARING PROCEDURE**

**1. DISABILITY RETIREMENT APPLICATION**

A. An application for disability retirement benefits shall be made in writing on a form provided by the Plan Administrator. The application must include a signed medical release form, a signed Disability Affidavit, and written proof that the applicant has applied for and diligently pursued disability benefits from social security and workers' compensation. Completed applications are considered to be filed with the Board when received by the Plan Administrator.

B. It shall be the function of the Plan Administrator and the Board's legal counsel, throughout the application procedure, to assist the Board in the discovery and presentation of evidence in order to assure that the Board receives all relevant information prior to the Board's decision

C. Upon receipt of the disability retirement application, the Plan Administrator shall obtain all medical reports of the providers identified on the application, the applicant's workers' compensation, personnel, departmental, and group health insurance files, member leave slips and other pertinent information. This information shall be included in the applicant's pension file.

D. At the first Board of Trustee's meeting following the Plan Administrator's receipt of the disability retirement application or at a special meeting convened for that purpose, the Board shall designate a medical board composed of at least one physician who specializes in the applicant's disability. The Board shall direct the Plan Administrator to schedule an independent medical examination (IME) and medical record review with the physician member of the medical board. The physician's report on these matters will be included in the applicant's pension file.

E. The Board shall pay from the Fund the cost of any medical examinations required by the Board and for copies of medical records.

F. Upon receipt of the physician's report, the Plan Administrator will schedule an initial hearing before the Board.

G. The applicant shall have the right to be represented by counsel or other representative at all times during the application process. If represented, all communications and correspondence will be through the applicant's legal counsel or representative.

**2. INITIAL HEARING ON THE APPLICATION**

A. At the initial hearing, the Board shall consider only the documentary evidence contained in the application and the applicant's pension file.

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D. At the first Board of Trustee's meeting following the Plan Administrator's receipt of the disability retirement application or at a special meeting convened for that purpose, the Board shall designate a medical board composed of at least one physician who specializes in the applicant's disability. The Board shall direct the Plan Administrator to schedule an independent medical examination (IME) and medical record review with the physician member of the medical board. The physician's report on these matters will be included in the applicant's pension file.

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G. The applicant shall have the right to be represented by counsel or other representative at all times during the application process. If represented, all communications and correspondence will be through the applicant's legal counsel or representative.

**2. INITIAL HEARING ON THE APPLICATION**

A. At the initial hearing, the Board shall consider only the documentary evidence contained in the application and the applicant's pension file.

B. Other than answers to questions from Board members or from the Board's legal counsel, the Board will take no additional evidence at the initial hearing, although the applicant or the applicant's legal counsel or representative may make a presentation not to exceed fifteen (15) minutes in length, limited to comments and/or arguments as to the evidence or information contained in the application and the applicant's pension file, including the physician report(s). The Board may allow a City representative to make a presentation not to exceed fifteen (15) minutes in length, concerning the application, which shall also be limited to comments and/or arguments as to the evidence or information contained in the application and the applicant's pension file.

C. At the conclusion of the initial hearing, the Board shall adopt a motion granting or denying the application, or take such other action as the Board may determine to be necessary or appropriate. A written order setting forth the Board's findings and conclusions on the Application ("Order") shall be provided to the applicant within thirty (30) days following the initial hearing. The Board may extend the time for entering the Order for up to an additional forty-five (45) days if it determines such time is necessary for adequate review.

The Order shall include:

- (i) The specific findings and conclusions of the Board, including the following:
  - (a) Whether the applicant has satisfied the definition of disability;
  - (b) Whether the disability is a service incurred disability or a non-service incurred disability; and,
  - (c) The date of disability, which may be the date of injury causing the disability, the date when the applicant could no longer perform his or her regular and continuous duties, the date when applicant's sick pay and vacation pay are exhausted or such other date as determined by the Board.
- (ii) Specific references to pertinent provisions of the Plan on which such conclusions are based;
- (iii) A description of any additional material or information that the Board may deem necessary for the applicant to perfect the claim, together with the reasons why such materials or information is necessary; and
- (iv) An explanation of the right to a full hearing on the claim and the time limit in which a full hearing must be requested in writing.

D. The decision of the Board at the initial hearing shall become final if the applicant does not request a full hearing within thirty (30) calendar days following receipt of the Board's Order on the initial hearing. The Board's Order shall be deemed received by the applicant three (3) business days following the date it is mailed to the applicant at the address provided to the Board by the applicant.

### 3. FULL HEARING

A. An applicant may request a full hearing on the issues presented to the Board at an initial hearing and upon which the Board has entered an Order. The applicant shall bear the burden of proof at the full hearing to show entitlement to the benefits sought.

B. A full hearing must be requested in writing by the applicant within thirty (30) calendar days following receipt of the Board's Order. The Board's Order shall be deemed received by the applicant three (3) business days following the date it is mailed to the applicant at the address provided to the Board by the applicant.

C. Upon receipt of the written request for a full hearing, the Board shall set a date for the full hearing and cause notice to be given to the applicant. The full hearing shall be held within ninety (90) calendar days following the receipt of the request from the applicant, unless the Board determines that additional time is necessary for full discovery or adequate review.

D. Copies of all documents to be offered into evidence at the full hearing, and a complete witness list with names and addresses of witnesses expected to be called, shall be furnished to the Board at least twenty (20) days prior to the full hearing. Documents not furnished to the Board within the prescribed time limit may be excluded from evidence at the full hearing, and witnesses not disclosed within the prescribed time limit may be excluded from testimony, if a reasonable explanation is not provided for the delay in providing the documents or witnesses.

E. The Board may designate legal counsel other than Board's legal counsel to present evidence, cross-examine witnesses, and otherwise participate in the hearing. The applicant, Board's legal counsel and other legal counsel that the Board may designate may obtain discovery by deposition and/or interrogatories prior to the full hearing. Written notice of any depositions and/or interrogatories shall be provided to the applicant or applicant's legal counsel or representative, Board's legal counsel and other legal counsel that the Board may designate.

F. All costs of discovery initiated by the applicant or applicant's legal counsel or representative, including compensation of the applicant's witnesses, shall be borne by the applicant.

G. Testimony may be submitted in the form of a deposition. Transcripts of depositions shall be made part of the disability pension file. Transcripts, or any portions thereof, may be read into the record by any party and may be referred to in argument.

H. The applicant shall be responsible for the appearance of any witnesses at the hearing.

I. Irrelevant and unduly repetitious evidence may be excluded.

J. Should an applicant decide to appeal any decision made by the Board, with respect to any matter considered at such hearing, the applicant will need a record of the proceeding and may need to assure that a verbatim record of the proceeding is made. The applicant will be responsible for obtaining a court reporter or otherwise making a record of the proceedings before the Board.

K. All witnesses shall be sworn before testifying. Any person who knowingly gives false testimony is guilty of a misdemeanor of the first degree, punishable as provided in Section 775.082 or 775.083, Florida Statutes.

L. The application and the applicant's pension file, including but not limited to medical reports, is part of the record before the Board at the full hearing.

M. All proceedings of the Board shall be conducted in public in accordance with Ch. 286, Fla. Stat. (Sunshine Law).

N. At the conclusion of the full hearing, the Board shall adopt a motion granting or denying the application. A written order setting forth the Board's findings and conclusions on the application shall be provided to the applicant within thirty (30) days following the hearing. The Board may extend the time for entering the order for up to an additional forty-five (45) days if it determines such time is necessary for adequate review. The decision of the Board after a full hearing shall be final and binding, subject to judicial review.

O. Judicial review of decisions of the Board shall be in the manner prescribed by law.