Disability Pension Hearings

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How to Prepare for and Conduct a Disability Hearing – What you need, and What to Decide

When determining eligibility for a disability pension:

1. Have an application form on which Applicant should state:
    a. what type of disability benefit is claimed: service-connected or non-service-connected
    b. cause of disability
    c. names and contact information of all medical providers for specific injury/illness claimed
    d. HIPAA medical records and confidentiality waiver authorizations.

2. Administratively review application:

a. is applicant a “participant” or “member” of plan?

b. does applicant have requisite years of service (i.e. non-duty)?

c. is application complete?

d. has applicant signed medical records release authorization?

3. Obtain and review employer's worker's compensation and group medical insurance files.

4. If required by state statute and/or ordinance, arrange for independent medical examination by pension fund doctor or medical board.

a. supply doctor(s) with ordinance's definition of disability
b. send doctor(s) applicant's job description
c. send doctor(s) applicant’s prior medical records

5. Determine whether applicant has applied for Social Security or disability insurance benefits. If so, obtain copies of applications and determinations if available (which are not binding on trustees but may be helpful).

6. Prepare notebook binders for all trustees with application, job description, applicable ordinance provisions and all records gathered. Supply copy to applicant and/or applicant's attorney.

7. Notify applicant, in writing, of trustees' meeting at which application will be considered.

8. At meeting:

a. explain standards and procedures;

b. invite applicant or applicant's attorney to address board;

c. invite trustee questions;

d. ask for Trustee motion to either:

i. “grant”; or

ii. “deny” stating reasons for denial; or

iii. “table” to get more information or allow for more time to consider

9. Questions to be answered by Trustees in deciding upon a disability application. *All* must be answered "YES" in order to grant a disability benefit:

a. Did the applicant suffer from an injury or illness?
b. If so, and the applicant is seeking a service-connected disability benefit, was the injury or illness service-connected?
c. If so, did the injury or illness cause a disability?
d. If so, is the disability permanent? In other words, has the applicant reached Maximum Medical Improvement (MMI)?

i. Standard accepted customary medical practice/procedures
ii. Cutting edge surgical procedure in Norway not necessary.

e. If so, does the disability wholly prevent the applicant from (apply the standard in your plan, for example:)

i. engaging in useful and efficient service as a police officer or fire fighter? (F.S. Chp. 175 & 185 standard)
ii. engaging in the applicant's specific occupation or job?
iii. engaging in any gainful occupation or work?

f. Did the applicant request a reasonable accommodation under the Americans with Disabilities Act?

10. Notify applicant of decision in writing. If pension is denied, specify reasons (i.e. which questions in above #9 were answered "no") and evidence relied upon by trustees in denying benefit. Provide applicant with method of appeal.

SERVICE-INCURRED PRESUMPTIONS

- Any disabling condition or impairment of health of any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter or any law enforcement officer, correctional officer, or correctional probation officer caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability (or death) shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence. However, any such firefighter or law enforcement officer must have successfully passed a physical examination upon entering into any such service as a firefighter or law enforcement officer, which examination failed to reveal any evidence of any such condition.

SERVICE-INCURRED PRESUMPTIONS

Firefighter Cancer – Effective July 1, 2019 (Ch. 2019-21, Law of Florida)

- Eligible firefighters: i) employed by his or her employer for at least 5 continuous years; and ii) has not used tobacco products for at least the preceding 5 years; and iii) has not been employed in any other position in the preceding 5 years which is proven to create a higher risk for any cancer.
- Diagnosed with at least one of 21 enumerated cancer forms.
- Firefighters participating in an employer-sponsored retirement plan must be considered totally and permanently disabled in the line of duty if he or she is unable to perform useful and efficient service as a firefighter due to the diagnosis of enumerated cancer forms or circumstances that arise out of the treatment of such cancer.
- Firefighters participating in an employer-sponsored retirement plan must be considered to have died in the line of duty if he or she dies as a result of the enumerated cancer forms or circumstances that arise out of the treatment of such cancer.
- All costs associated with disability and death presumptions to be borne solely by employer.

11. If application is granted, calculate amount of benefit and determine offsets, if any.

a. Offset for worker's compensation benefits is limited to the extent to which total of worker's compensation benefit and disability benefit exceeds average monthly compensation. Barragan v. City of Miami, 545 So.2d 252 (Fla. 1989).

b. If worker's compensation case is settled for lump sum, divide by benefit rate to determine number of months of offsets.

12. If application is denied, provide Order adopted by Board articulating reasons for denial and the member's ability to appeal such decision in accordance with the specific parameters of your local ordinance.

13. If injury was caused by a third party, consider subrogation claim:

a. pension fund brings suit against third party seeking reimbursement of disability benefits paid
b. if applicant has sued third party, intervene in suit asserting subrogation rights

14. Periodic medical review:

a. review each disability recipient's file for continued eligibility.
b. determine if continued disability is obvious (i.e. missing limb or extremity, paralyzed, coma, mentally incapacitated, etc…)

c. if not obvious, depending upon the case, require recipient to:

i. submit report from recipient's treating doctor for disabling injury/illness; or
ii. submit proof of continued receipt of social security disability benefits; or
iii. be examined by fund doctor or medical board.