



NEW JERSEY LAW REVISION COMMISSION

Draft Final Report Addressing Availability of Disability Benefits To Employees Who Left Public Sector Employment

April 11, 2022

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.

Please consult the New Jersey statutes in order to determine the law of the State.

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Project Summary¹

In New Jersey, most State employees are eligible for membership in the Public Employees' Retirement System (PERS). Pursuant to N.J.S. 43:15A-42, PERS members who have met minimum service credit requirements receive ordinary disability retirement benefits (ODRB) when “the member is physically or mentally incapacitated for the performance of duty and should be retired.”² The text of the statute is silent, however, regarding the eligibility of a PERS member who leaves public employment before becoming disabled, but retains membership in PERS.³ This question was addressed by the Appellate Division in *Murphy v. Bd. of Tr., Pub. Emp. 's Ret. Sys.*⁴

The Commission recommends modifying the language in N.J.S. 43:15A-42 to clarify that an eligible PERS member must be “currently employed” in a PERS position at the time of the disability to receive ODRB.

Relevant Statute

N.J.S. 43:15A-42 provides in relevant part:

[a] member, under 60 years of age, who has 10 or more years of credit for New Jersey service, shall, upon the application of the head of the department in which he shall have been employed or upon his own application or the application of one acting in his behalf, be retired for ordinary disability by the board of trustees. The physician or physicians designated by the board shall have first made a medical examination of him at his residence or at any other place mutually agreed upon and shall have certified to the board that the member is physically or mentally incapacitated for the performance of duty and should be retired.

The service requirement provisions of this amendatory and supplementary act shall not become effective for 5 years following the effective date of the act.

No person who becomes a member of the retirement system on or after the effective date of P.L.2010, c.3 shall be eligible for retirement pursuant to this section.

Background

The Petitioner in *Murphy v. Bd. of Tr., Pub. Emp. 's Ret. Sys.* began employment with the Wall Township Board of Education in 1999.⁵ In 2006, she was terminated from her employment,

¹ Preliminary work on this project was conducted by Christopher Mrakovic during his tenure as a Legislative Law Clerk with the NJLRC.

² N.J.S. 43:15A-42.

³ See *Murphy v. Bd. of Tr., Pub. Emp. 's Ret. Sys.*, 2019 WL 1646371, at *1, note 2 (App. Div. Apr. 15, 2019) (“N.J.S.A. 43:15A-7(e) provides that “[m]embership of any person in the retirement system shall cease if he shall discontinue his service for more than two consecutive years.”).

⁴ 2019 WL 1646371 (App. Div. Apr. 15, 2019).

⁵ *Murphy*, 2019 WL 1646371, at *1.

but following a successful unfair labor practice claim, she was reinstated in 2009 and awarded back pay.⁶ In 2012, Petitioner and her employer entered into a settlement agreement, ending her employment in exchange for \$485,000.⁷ Thereafter, she obtained work in the private sector.⁸

In 2013, Petitioner became totally and permanently disabled, and in 2014, she applied for ODRB under N.J.S. 43:15A-42.⁹ The PERS Board of Trustees (PERS Board) denied the application, and the case was heard by an administrative law judge (ALJ).¹⁰ Before the ALJ, Petitioner argued she was eligible for benefits because “it was not disputed she was still a member of PERS, under sixty years of age, had provided over ten years of service for the State, and was totally and permanently disabled when she applied for ODRB benefits.”¹¹ The PERS Board argued Petitioner was not entitled to benefits because she did not have the disability when she “voluntarily resigned” from her PERS-eligible employment.¹²

The ALJ held that the “[P]etitioner was entitled to ODRB because she was still a member of PERS when she applied for benefits and it was undisputed she became disabled while a member.”¹³ The PERS Board appealed and reversed the ALJ’s initial decision, finding that “the only issue in this case is whether a PERS member is eligible for [ORDB] if she separates from service because of a voluntary resignation,” rather than a disability.¹⁴ The PERS Board held that the language in N.J.S. 43:15A-42, that a member is incapacitated “for the performance of duty and should be retired,” evinced a legislative intent to include only those members “holding a position of public employment when he [or she] becomes disabled.”¹⁵

Analysis

The Appellate Division affirmed the final determination of the PERS Board.¹⁶ The Court found that N.J.S 43:15A-42 is “sufficiently ambiguous to require [the Court] resort to extrinsic evidence to divine the Legislature’s intent when it enacted this statute.”¹⁷ In *In re Adoption of N.J.A.C. 17:1-6.4*, the Court held that “termination of employment, for non-disability reasons, generally deems a member ineligible for disability benefits.”¹⁸ The *In re Adoption* Court further

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at *2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at *3.

¹⁷ *Id.*

¹⁸ *Id.* at *3, citing *In re Adoption of N.J.A.C. 17:1-6.4*, 454 N.J. Super. 386, 394 (App. Div.), *certif. denied*, 236 N.J. 38 (2018).

held “there is no ‘explicit text in the enabling statutes because it is common sense that disability retirees leave their jobs due to a purported disability.’”¹⁹

The *Murphy* Court determined that the phrases “for the performance of duty” and “should be retired” in N.J.S. 43:15A-42 “reveals the Legislature contemplated that when a member seeks ODRB, he or she is performing duties for a public entity, but a physician has determined such member must retire.”²⁰ The Court also cited the PERS rehabilitation statutes, which require “disability retiree[s] whose disability has abated to return to active service.”²¹

Therefore, the Court held that an employee must be disabled from public sector employment, in addition to the other statutory requirements, to receive ODRB.²²

Outreach

In connection with this Report, Staff sought comments from knowledgeable individuals and organizations including: the New Jersey Division of Pensions and Benefits; the New Jersey Public Employment Relations Committee; the Chair and Legislative Coordinators of the Labor and Employment Law Section in the New Jersey Bar Association; the Chair of the New Jersey Retired Public Employees Advisory Board; the New Jersey Attorney General’s Office, including the Deputy Attorney General serving as the Legal Advisor to the PERS Board of Trustees; the National Association of State Retirement Administrators; Professor Timothy Glynn of Seton Hall Law School; Professor Pam Jenoff of Rutgers University School of Law; and the attorneys for the Petitioner in *Murphy*.

To this time, there has not been any response to the outreach conducted.

Legislation

There is currently no pending legislation addressing N.J.S. 43:15A-42.

Conclusion

As set forth in the Appendix, the Commission recommends modifying N.J.S. 43:15A-42 to clarify that otherwise eligible PERS members who leave public employment for a reason other than disability, are not entitled to ordinary disability retirement benefits. This clarification is consistent with the Appellate Division’s holding in *Murphy v. Bd. of Tr., Pub. Emp.’s Ret. Sys.*²³

¹⁹ *Id.*, quoting *In re Adoption of N.J.A.C. 17:1-6.4*, 454 N.J. Super. at 399.

²⁰ *Murphy*, 2019 WL 1646371 at *3 (emphasis added).

²¹ *Id.*, citing N.J.S. 43:15A-44.

²² *Id.*

²³ 2019 WL 1646371 (App. Div. Apr. 15, 2019).

Appendix

The proposed modifications to **N.J.S. 43:15A-42** (shown with ~~strikethrough~~ and underlining), follow:

43:15A-42. Ordinary disability retirement

a. A member, under 60 years of age, who has 10 or more years of credit for New Jersey service, currently employed in a Public Employees' Retirement System (PERS) eligible position shall, upon the application of the head of the department in which he shall have been employed or upon his own application or the application of one acting in his behalf, be retired for ordinary disability by the board of trustees if he or she:

(1) is under 60 years of age;

(2) has 10 or more years of credit for New Jersey service; and,

(3) has undergone a medical examination by the physician or physicians designated by the board, at the member's residence or any other place mutually agreed upon, and the physician or physicians have certified to the board that the member is:

(A) physically or mentally incapacitated for the performance of duty; and,

(B) should be retired.

~~The physician or physicians designated by the board shall have first made a medical examination of him at his residence or at any other place mutually agreed upon and shall have certified to the board that the member is physically or mentally incapacitated for the performance of duty and should be retired.~~

~~The service requirement provisions of this amendatory and supplementary act shall not become effective for 5 years following the effective date of the act.~~

b. An application pursuant to subsection a. may be made by:

(1) the member;

(2) someone acting on the member's behalf; or,

(3) the head of the department in which the member was employed.

c. No person who becomes a member of the retirement system on or after the effective date of P.L.2010, c. 3 shall be eligible for retirement pursuant to this section.

COMMENT

The statute as currently written does not state whether it permits or prohibits the extension of ordinary disability retirement benefits to eligible PERS members who leave public sector employment before the onset of disability. The proposed language clarifies that an eligible member must be “currently employed in a Public Employees’ Retirement System (PERS) eligible position” at the time of disability to receive ODRB. The language is consistent with the Appellate Division’s holding in *Murphy v. Bd. of Tr., Pub. Emp. ’s Ret. Sys.* that the language “for the performance of duty” and “should be retired” indicates a legislative intent that the disability retirement is from public sector employment.²⁴

The proposed language also divides the statute into subsections to improve readability and accessibility. Additionally, the language comprising proposed subsection b. was relocated from the first paragraph of N.J.S. 43:15A-42, as it addresses who may bring an application for ODRB, rather than eligibility requirements for receiving ODRB.

Finally, the proposed changes delete the provision that the service requirements become effective five years after the “amendatory and supplementary act[’s]” effective date, as it is long past the effective date of the provision.²⁵

²⁴ 2019 WL 1646371 at *3.

²⁵ L.1966, c. 67, § 3, eff. June 8, 1966 (statute was enacted in 1954, and the service requirement was added in 1966).