

Arizona Revised Statutes Annotated

Title 38. Public Officers and Employees (Refs & Annos)

Chapter 5. Social Security and Retirement

Article 4. Public Safety Personnel Retirement System (Refs & Annos)

A.R.S. § 38-844

§ 38-844. Requirements for retirement benefits and disability pensions

Effective: September 13, 2013

Currentness

A. A member shall be eligible for a normal pension on retirement on or after the member's normal retirement date. Payment of a normal pension shall commence as of the first day of the month following the date of retirement, and the last payment shall be made as of the last day of the month in which the death of the retired member occurs.

B. A member is eligible for an accidental disability pension if the member's employment is terminated by reason of accidental disability. A member is eligible for an ordinary disability pension if the member's employment is terminated before the member's normal retirement date by reason of ordinary disability. A member shall file an application for a disability pension after the disabling incident or within one year after the date the member ceases to be an employee. Timely application for an accidental, catastrophic or ordinary disability pension is a prerequisite to receipt of the pension. Payment of an accidental, catastrophic or ordinary disability pension shall commence as of the first day of the month following the date of retirement or the expiration of a period during which the member is receiving sick leave payments or a temporary disability pension, whichever is later, but not earlier than § 38-845.02 allows for retroactive payments. The last payment shall be made as of the last day of the month in which the death of the retired member occurs, or if disability ceases before the member's normal retirement date, the first day of the month in which disability ceases.

C. A member is eligible for a catastrophic disability pension if the member's employment is terminated by reason of catastrophic disability. If more than the allowable catastrophic disability pensions are approved by the local boards in a calendar year, from and after December 31 of the following calendar year a member of the system is not eligible to apply for a catastrophic disability pension. On or before January 31, the board of trustees shall report to the president of the senate and the speaker of the house of representatives the number of catastrophic disability pensions that were approved by the local boards in the preceding calendar year. For the purposes of this subsection, "allowable catastrophic disability pensions" means for calendar year 2004, ten, and for subsequent calendar years the number of allowable catastrophic disability pensions allowed in the prior calendar year minus the number of catastrophic disability pensions approved by the local boards in the prior calendar year plus four.

D. Notwithstanding any other provision of this section, no member shall qualify for an accidental, catastrophic or ordinary disability pension if the local board determines that the member's disability results from the following:

1. An injury suffered while engaged in a felonious criminal act or enterprise.

2. Service in the armed forces of the United States that entitles the member to a veteran's disability pension.

3. A physical or mental condition or injury that existed or occurred before the member's date of membership in the system.

E. Accidental or ordinary disability shall be considered to have ceased and an accidental or ordinary disability pension terminates if the member:

1. Has sufficiently recovered, in the opinion of the local board, based on a medical examination by a designated physician or a physician working in a clinic that is appointed by the local board, to be able to engage in a reasonable range of duties within the member's department and the member refuses an offer of employment by an employer in the system.

2. Refuses to undergo any medical examination requested by the local board, provided that a medical examination shall not be required more frequently than once in any calendar year.

F. Sixty months after the award of a catastrophic disability pension, the local board shall reevaluate the member. If the member still qualifies for the catastrophic disability pension, the member is entitled to continue to receive the pension at the reduced amount prescribed in § 38-845, subsection E. A catastrophic disability shall be considered to have ceased and a catastrophic disability pension terminates if the local board determines that the member has sufficiently recovered and is able to engage in gainful employment based on a medical examination by a designated physician or a physician working in a clinic that is appointed by the local board. After the sixty-month review, the catastrophic disability shall be considered to have ceased and a catastrophic disability pension terminates if the local board determines that the member has sufficiently recovered and is able to engage in gainful employment based on a medical examination by a designated physician or a physician working in a clinic that is appointed by the local board, except that the medical examination shall not be required more frequently than once in a calendar year. The medical review after the sixty-month period does not apply after the date the catastrophic disability pensioner would have attained twenty-five years of service assuming the pensioner remained a member of the system. The local board shall also terminate a catastrophic disability pension if the member refuses to undergo any medical examination requested by the local board. A member whose catastrophic disability pension is terminated may apply for and if eligible is entitled to receive an accidental disability pension as provided in this section.

G. Subsection E of this section does not apply after a disability pensioner's normal retirement date. The amount of a disability pension shall not be recomputed at a disability pensioner's normal retirement date.

H. If accidental or ordinary disability ceases before a retired member attains the member's normal retirement date and the member is reemployed by an employer, the member shall be treated as if the member has been on an uncompensated leave of absence during the period of the member's disability retirement and shall be a contributing member of the system. The pension payable on the member's subsequent retirement shall be determined as provided in § 38-845.

I. A member shall be eligible for a temporary disability pension if the member's employment is terminated before the member's normal retirement date by reason of temporary disability. Payment of a temporary disability pension shall commence as of the first day of the month following the date of disability or the expiration of a period during which the member is receiving compensation and sick leave payments, whichever is later. The last payment shall be made as of the first day of the month in which either the death of the member occurs or the local board deems the member is no longer under temporary disability, whichever first occurs, provided that no more than twelve monthly temporary disability payments shall be made in total to the member.

J. If on the expiration of a temporary disability pension the local board finds on application that the member has an accidental or ordinary disability, the member shall be eligible for an accidental or ordinary disability pension, as provided in this section.

K. The system shall make payments pursuant to [section 401\(a\)\(9\) of the internal revenue code](#)¹ and the regulations that are issued under that section. Notwithstanding any other provision of the system, beginning January 1, 1987 payment of benefits to a member shall commence no later than April 1 of the calendar year following the later of:

1. The calendar year in which the member attains seventy and one-half years of age.
2. The date the member terminates employment.

Credits

Added by Laws 1968, Ch. 85, § 1. Amended by Laws 1971, Ch. 143, § 3, eff. July 1, 1972; Laws 1980, Ch. 146, § 2; Laws 1983, Ch. 300, § 6; [Laws 1988, Ch. 267, § 3](#); [Laws 1994, Ch. 356, § 25](#); [Laws 1996, Ch. 318, § 1](#); [Laws 1997, Ch. 239, § 11](#); [Laws 2004, Ch. 91, § 1](#); [Laws 2004, Ch. 325, § 2](#); [Laws 2009, Ch. 35, § 12](#); [Laws 2010, Ch. 118, § 5](#); [Laws 2010, Ch. 200, § 35, eff. April 28, 2010](#); [Laws 2012, Ch. 136, § 5](#); [Laws 2013, Ch. 203, § 4](#).

Footnotes

¹ Internal Revenue Code sections may be found in Title 26 of U.S.C.A.

A. R. S. § 38-844, AZ ST § 38-844

Current through legislation effective June 7, 2019 of the First Regular Session of the Fifty-Fourth Legislature (2019).

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Notes Of Decisions (10)

Disability pension

Firefighter's termination of his employment due to expiration of deferred retirement option plan (DROP) period precluded eligibility for an accidental disability pension; firefighter's sole reason for terminating his employment was because his DROP period expired, and his alleged disability was not a reason for retirement, as firefighter suggested. [Hosea v. City of Phoenix Fire Pension Bd. \(App. Div.1 2010\) 224 Ariz. 245, 229 P.3d 257](#) , review denied. [Municipal Corporations 200\(5\)](#) ; [Public Employment 389\(4\)](#)

Firefighter failed to meet initial statutory requirement for eligibility, and therefore city fire pension board was not required to appoint a medical board before denying his application for accidental disability benefits; appointment of a medical board would have been futile, and firefighter's interpretation of the statutes to mandate that requirement in all cases would have lead to an absurd consequence not intended by the legislature. [Hosea v. City of Phoenix Fire Pension Bd. \(App. Div.1 2010\) 224 Ariz. 245, 229 P.3d 257](#) , review denied. [Municipal Corporations 200\(8.1\)](#) ; [Public Employment 451](#)

City fire pension board's finding that firefighter terminated his employment because deferred retirement option plan (DROP) period had expired, rather than by reason of accidental disability, was supported by substantial evidence; firefighter worked his last day before retirement on a fire tire on duty at full-time capacity, firefighter never sought workers' compensation benefits or treatment at his employer's health center, and employer had no knowledge of his alleged inability to perform his duties. [Hosea v. City of Phoenix Fire Pension Bd. \(App. Div.1 2010\) 224 Ariz. 245, 229 P.3d 257](#) , review denied. [Municipal Corporations 200\(9\)](#) ; [Public Employment 626\(1\)](#)

Town fire chief who resigned and applied for an accidental disability pension was not required to prove that his accidental disability was the sole reason for his resignation; although town manager had written letter to fire chief regarding intent to terminate him based on alleged misconduct, the unchallenged independent medical report established that fire chief was physically unable to continue to perform the duties of his job, and, therefore, he qualified for pension. [Parkinson v. Guadalupe Public Safety Retirement Local Bd. \(App. Div.1 2007\) 214 Ariz. 274, 151 P.3d 557](#) , review denied. [Municipal Corporations 196](#) ; [Public Employment 389\(2\)](#)

Substantial gainful employment

Whether a permanently disabled member of the public safety personnel retirement system is engaged in "substantial gainful employment" ultimately must be determined through an examination of the facts and circumstances of each individual case. Op.Atty.Gen. No. 70-10.

Rehabilitation

Responsibility for determining whether a member's employment during disability is for primary purpose of rehabilitation rests upon local retirement board of the member under § 38-847. Op.Atty.Gen. No. 70-10.

Normal retirement

Game and fish department employee whose 20 years of employment included time spent away from being regularly assigned to hazardous duty as a game and fish warden would not have accumulated the years of service required to be eligible for normal retirement under the public safety personnel retirement system. Op.Atty.Gen. No. 74-26.

Misconduct

Where city police officer was terminated because of misconduct and not because of any disability, he was not eligible for disability pension. [Leschinsky v. Public Safety Personnel Retirement System](#) (App. Div.2 1976) 27 Ariz.App. 618, 557 P.2d 550. [Municipal Corporations](#) 187(5); [Public Employment](#) 389(2)

Termination of benefits

Disability benefits which have previously been granted to department of public safety personnel shall be terminated when a member dies, when his disability in fact ceases, or when he refuses to undergo a medical examination. Op.Atty.Gen. No. 179-285, [1979 WL 23352](#).

Resignation

Town fire chief who resigned and applied for an accidental disability pension was not required to prove that his accidental disability was the sole reason for his resignation; although town manager had written letter to fire chief regarding intent to terminate him based on alleged misconduct, the unchallenged independent medical report established that fire chief was physically unable to continue to perform the duties of his job, and, therefore, he qualified for pension. [Parkinson v. Guadalupe Public Safety Retirement Local Bd.](#) (App. Div.1 2007) 214 Ariz. 274, 151 P.3d 557, review denied. [Municipal Corporations](#) 196; [Public Employment](#) 389(2)

Context and Analysis (1)

United States Supreme Court (1)

Mandatory retirement. Uniformed branch of state police, see [Massachusetts Bd. of Retirement v. Murgia](#), U.S.Mass.1976, 96 S.Ct. 2562, 427 U.S. 307, 49 L.Ed.2d 520.

Validity

There are no Validity results for this citation.