

**NOTICE OF SPECIAL MEETING
SAN LUIS POLICE DEPARTMENT PUBLIC SAFETY PERSONNEL LOCAL
RETIREMENT BOARD**

In accordance with §38-431.01 of the Arizona Revised Statutes of the State of Arizona, notice is hereby given to the Board and to the general public that the San Luis Police Department Public Safety Personnel Local Retirement Board will hold a meeting at 4:00 p.m., Wednesday July 3rd, 2019. The meeting will take place at the City Council Chambers, located at 1090 E. Union Street, San Luis, Arizona, 85349. Everyone from the public is invited to attend the open meeting.

In accordance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, the City of San Luis does not discriminate on the basis of disability in the admission of or access to, or treatment of employment in its programs, activities, or services. For information regarding rights and provisions of the ADA or Section 504, or to request reasonable accommodations for participation in City programs, activities or services contact: ADA/Section 504 Coordinator, City of San Luis Human Resources Department, 1090 E. Union Street, San Luis, Arizona, 85349; (928) 341-8520.

Notice is hereby given that pursuant to A.R.S. §1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the Board are audio and/or video recorded, and, as a result, proceedings in which children are present may be subject to such recordings. Parents in order to exercise their rights may either file written consent with the City Clerk to such recordings, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the City will assume that the rights afforded parents pursuant to A.R.S. §1-602.A.9 have been waived.

THIS NOTICE IS GIVEN BY:

/s/ Michelle Boucher, Administrative Coordinator

**AVISO DE JUNTA
SAN LUIS POLICE DEPARTMENT PUBLIC SAFETY PERSONNEL LOCAL
RETIREMENT BOARD**

De acuerdo con los Estatutos del Estado de Arizona A.R.S. §38-431.01, se le informa a los miembros de la Mesa Directiva y al publico en general que el San Luis Police Department Public Safety Personnel Local Retirement Board, tendran una junta a las 4:00 p.m., el día Miercoles, 3 de Julio del 2019. La junta se llevara a cabo en la Sala del Cabildo, ubicada en el 1090 E. Union Street, San Luis, Arizona, 85349. El publico este cordialmente invitado a la junta.

De acuerdo con el Acta de Americanos con Discapacidades y la Seccion 504 del Acta de Rehabilitacion del 1973, la Ciudad de San Luis, Arizona no discrimina por causa de discapacidad la admision y acceso a sus programas, actividades, servicios o en el trato en cuanto a empleo. Para mas informacion referente a derechos y provisiones del Acta de Americanos con Discapacidades o Sección 504, o para solicitar adaptaciones que sean razonables para la participacion en programas, actividades o servicios de la Ciudad, contactar al: Coordinador del Acta de Americanos con Discapacidades/Sección 504, Departamento de Recursos Humanos de la Ciudad de San Luis, Arizona, ubicado en el 1090 E. Union Street, San Luis, Arizona, 85349; (928) 341-8520.

Por medio de este aviso y de acuerdo con los Estatutos del Estado de Arizona A.R.S §1-602.A.9, sujeto a ciertas excepciones reglamentarias, los padres de familia tienen el derecho de dar el consentimiento ante el Estado o cualquiera de sus subdivisiones politicas para hacer una grabacion de audio o video de su hijo menor de edad. Las juntas de la Mesa Directiva se graban en audio y/o video y como resultado, el hecho de que hays menores presentes puede ser sujeto a que sean grabados. Para que los padres de familia puedan ejercer sus derechos pueden dar el consentimiento por escrito con la Secretaria de la Ciudad a tal grabacion, o tomar accion personal para asegurarse que su hijo menor no este presente cuando la grabacion se lleve a cabo. Si un menor de edad este presente en el momento de la grabacion, la Ciudad asumira que los padres de familia estan cediendo los derechos sobre una posible grabacion de acuerdo con los Estatutos del Estado de Arizona A.R.S. §1-602.A.9.

ESTE AVISO ES DADO POR:

/f/ Michelle Boucher, Coordinadora Administrativa



AGENDA
Special Meeting
San Luis Police Department
Public Safety Personnel
Local Retirement Board
San Luis Council Chambers
1090 E. Union Street
San Luis, Arizona 85349
July 3, 2019
4:00 p.m.



PLEASE TAKE NOTICE THAT MEMBERS OF THE BOARD WILL ATTEND EITHER IN PERSON, TELEPHONE, OR VIDEO CONFERENCE COMMUNICATION. THE CHAIR OR ACTING CHAIR FOR THIS MEETING MAY CHANGE THE ORDER OF THE ITEMS; IF AUTHORIZED BY LAW AND BY A MAJORITY VOTE OF A QUORUM OF BOARD MEMBERS PRESENT, AN EXECUTIVE SESSION WILL BE HELD IMMEDIATELY FOLLOWING THE VOTE IN ACCORDANCE WITH A.R.S. §38-431.03(A) AND THE MEETING WILL BE TEMPORARILY RECESSED WHILE THE BOARD RETIRES TO EXECUTIVE SESSION WHICH WILL NOT BE OPEN TO THE PUBLIC.

1. CALL TO ORDER/ROLL CALL

2. CONSENT AGENDA

All matters are considered to be routine by the Commission and will be enacted by one motion. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

2. A. MINUTES OF

-Special Board meeting held March 18, 2019

3. DISCUSSION AND POSSIBLE ACTION ITEMS:

3. A. Discussion and possible action on any and all matters regarding adopting the Public Safety Personnel Retirement System Revised Model Uniform Rules of Local Board Procedure. **(Kay Marion Macuil, City Attorney)**

3. B. Discussion and possible action on any and all matters regarding designating a physician or physicians to a medical board and adopting that medical board. **(Edgardo Carbajal, Human Resources Coordinator).**

3. C. Discussion and possible action on any and all matters regarding new membership applications, Police Officer Rafael Lizarde, effective date January 14, 2019, Police Officer Jose Pereda, effective date April 14, 2019, and Police Officer Vicente Torres effective date January 14, 2019. **(Edgardo Carbajal, Human Resources Coordinator)**

4. ADJOURNMENT



AGENDA ITEM REVIEW FORM



PSPRS - Police

2.A.

Meeting Date: 07/03/2019

Submitted By: Michelle Boucher, Administrative Coordinator, Police Department

ITEM:

MINUTES OF

-Special Board meeting held March 18, 2019

SUMMARY:

Approval of minutes of Special Board meeting held March 18, 2019.

RECOMMENDATION / SUGGESTED MOTION:

I MOVE TO APPROVE THE MINUTES OF THE SPECIAL BOARD MEETING HELD MARCH 18, 2019.

Attachments

3/18/2019 SBM

MINUTES

Special Meeting
San Luis Police Department Public Safety Personnel Local Retirement Board
San Luis Council Chambers
1090 E Union Street
March 18th, 2019
3:00 p.m.

1. CALL TO ORDER/ROLL CALL: Chairman Tadeo A. De La Hoya called the meeting to order at approximately 3:13 p.m.

PRESENT: Tadeo A. De La Hoya, Chairman
Ernesto Prieto, Contributing Member
Marco Santana, Contributing Member
Monica Castro, Board Member

OTHERS PRESENT: Kay Marion Macuil, City Attorney
Sonia Cornelio, City Clerk
Melissa Lopez, Deputy City Clerk
Axel Chayra, IT Department
Maria Munoz, HR Department
Fausto Gonzalez, HR Department
Monica Ruiz, Police Department
Michelle Boucher, Police Department

2. CONSENT AGENDA

2A. MINUTES OF

-Special board meeting held October 4th, 2018

MOTION: Contributing Member Marco Santana/ Contributing Member Ernesto Prieto to approve consent agenda as presented. Motion passed unanimously.

The vote was as follows:

Board Member Monica Castro	Aye
Contributing Member Marco Santana	Aye
Contributing Member Ernesto Prieto	Aye
Chairman Tadeo A. De La Hoya	Aye

3. DISCUSSION AND POSSIBLE ACTION ITEM:

3A. Discussion and possible action on any and all matters regarding the election of a non-voting secretary to serve on the San Luis Police Department Public Safety Personnel Local Retirement Board. Mr. Tadeo De La Hoya, Chairman, informed the board of the letter of resignation from Monica Ruiz as Board Secretary in December 2018. Michelle has expressed interest to become non-voting secretary for the board. The duties include, but are not limited to, keeping a record and preparing and sending minutes. Staff is recommending Michelle Boucher be appointed as non-voting Secretary of the board. No questions comments or concerns. (Tadeo De La Hoya, Chairman)

MOTION: Contributing Member Ernesto Prieto/Contributing Member Marco Santana to elect Michelle Boucher as non-voting Secretary. Motion passed unanimously.

The vote was as follows:

Board Member Monica Castro	Aye
Contributing Member Marco Santana	Aye
Contributing Member Ernesto Prieto	Aye
Chairman Tadeo A. De La Hoya	Aye

Mr. De La Hoya, Chairman welcomed Ms. Michelle Boucher Boucher, Non-Voting Secretary to the board.

4. ADJOURNMENT

MOTION: Board Member Monica Castro/Contributing Member Marco Santana to adjourn the special meeting at approximately 3:16 p.m. Motion passed unanimously.

The vote was as follows:

Board Member Monica Castro	Aye
Contributing Member Marco Santana	Aye
Contributing Member Ernesto Prieto	Aye
Chairman Tadeo A. De La Hoya	Aye



AGENDA ITEM REVIEW FORM



PSPRS - Police

3.A.

Meeting Date: 07/03/2019

Submitted By: Kay Macuil, City Attorney, Attorney's Office

ITEM:

Discussion and possible action on any and all matters regarding adopting the Public Safety Personnel Retirement System Revised Model Uniform Rules of Local Board Procedure. **(Kay Marion Macuil, City Attorney)**

SUMMARY:

ARS § 38-847(F) states:

"A local board, from time to time, shall establish and adopt such rules as it deems necessary or desirable for its administration. All rules and decisions of a local board shall be uniformly and consistently applied to all members in similar circumstances. If a claim or dispute is presented to a local board for determination but the local board has not yet adopted uniform rules of procedure for adjudication of the claim or dispute, the local board shall adopt and use the model uniform rules of local board procedure that are issued by the board of trustees' fiduciary counsel to adjudicate the claim or dispute."

The only variable for the Board to decide is the two times per year to have its regular meetings. For example, 4:00 p.m. the Third Wednesday in September and February .

For this item, there are two (2) motions — one for the regular meeting date and one to adopt the model procedures.

RECOMMENDATION / SUGGESTED MOTION:

(1) I MOVE TO SET THE BOARD'S TWO REGULAR MEETINGS ON _____AND_____.

(2) I MOVE TO ADOPT THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM REVISED MODEL UNIFORM RULES OF LOCAL BOARD PROCEDURE ADOPTED BY THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM BOARD OF TRUSTEES ON NOVEMBER 16, 2016.

Attachments

Model Procedure

ARS 38-847 Local Board's Rules

**Public Safety Personnel Retirement System
Revised Model Uniform Rules of Local Board Procedure
Created Pursuant to A.R.S. § 38-847(F)**

**Adopted by the Public Safety Personnel Retirement System Board of Trustees on
November 16, 2016**

A. Definitions

1. "A.R.S." means Arizona Revised Statutes.
2. "Administrator" means the Administrator of the Plan (including any persons authorized by the Administrator to act for the Administrator) acting for the benefit of the Board of Trustees as more particularly described in A.R.S. § 38-848(L).
3. "Board of Trustees" has the meaning ascribed to that term in A.R.S. § 38-842(8).
4. "Claim" means any request for relief under the Plan involving all questions of eligibility and service credits, which is properly before a Local Board for Decision, pursuant to A.R.S. § 38-847(D).
5. "Claimant" has the meaning ascribed to that term in A.R.S. § 38-842(11).
6. "Decision" means (i) a separate written document setting forth the Local Board's action resolving a Claim; or (ii) any orders issued by a Local Board relating to a Claim, including orders denying a request for Rehearing or further relief. As required by A.R.S. § 38-847(G), a Decision shall contain, at a minimum, (a) the name of the member affected by the Local Board's action; (b) a description of the action taken; and (c) an explanation of the reasons supporting the Local Board's action.
7. "Decision on Rehearing" means a Decision issued by the Local Board after a Rehearing.
8. "Employee" has the meaning ascribed to that term in A.R.S. § 38-842 (27).
9. "Employer" has the meaning ascribed to that term in A.R.S. § 38-842(28).
10. "Hearing" means the Local Board's initial public Meeting concerning a Claim, which is conducted in accordance with the Open Meeting Law and these Rules.
11. "Initial Decision" means the first Decision on a Claim issued by the Local Board.
12. "Local Board" means that public body described in A.R.S. § 38-847.
13. "Meeting" is a gathering of a quorum of the Local Board to conduct business and to hold Hearings and/or Rehearings, which is conducted in accordance with the Open Meeting Law and these Rules.
14. "Member" has the meaning ascribed to that term in A.R.S. § 38-842(31).

15. "Minutes" means the written official record of the proceedings, including the testimony of witnesses.
16. "Non-Routine Claim" means any Claim that is not a Routine Claim, including, but not limited to, Claims for the following: (i) a "killed in the line of duty" survivor pension; (ii) an accidental disability pension; (iii) a catastrophic disability pension; (iv) an ordinary disability pension; (v) a temporary disability pension; or (vi) determinations for plan membership concerning whether the Employee is or was regularly assigned to hazardous duty.
17. "Notice" means a written Notice of Hearing or Rehearing, as applicable, which includes, at minimum: (i) a statement of the time, place and nature of the Hearing or Rehearing; (ii) a statement of the legal authority and jurisdiction under which the Local Board will be conducting the Hearing or Rehearing; (iii) a reference to the particular section(s) of the Arizona Revised Statutes (and/or any other applicable rules) involved in the particular matter presented for Decision; and (iv) a short and plain statement of the matters asserted by the Claimant or issues to be considered at the Hearing or Rehearing.
18. "Open Meeting Law" is that body of laws described in Title 38, Ch. 3, Article 3.1 of the Arizona Revised Statutes, which requires public bodies, such as the Local Board, to hold its meetings and conduct its activities in public, except in those limited circumstances described in A.R.S. § 38-431.03.
19. "Party or Parties" means the Claimant, Local Board and Board of Trustees.
20. "Plan" means the Public Safety Personnel Retirement System, as described in A.R.S. § 38-841 *et seq.*
21. "Political Subdivision Local Board" means any Local Board that is not a State Agency Local Board. Examples of Political Subdivision Local Boards are Local Boards where the sponsoring Employer is a municipality, county, tribal nation or fire district.
22. "Pre-Membership Physical" means a medical examination of an Employee before the Employee joins the Plan, for the purpose of identifying physical or mental conditions or injuries, which existed or occurred prior to the Employee's date of membership in the Plan, pursuant to A.R.S. § 38-859(A)(1).
23. "Presiding Officer" means the Chair or Acting Chair of the Local Board, who presides over any Meeting, Hearing or Rehearing.
24. "Rehearing" means a public Meeting before the Local Board that is conducted in accordance with the Open Meeting Law and these Rules, to consider a Claimant's or the Board of Trustees's request that the Local Board reconsider its Initial Decision, as provided by A.R.S. § 38-847(H).

25. "Routine Claim" means a Claim for any of the following: (i) a normal retirement pension; (ii) an early retirement pension; (iii) a normal survivor pension; (iv) a determination of eligibility for Plan membership other than that involving whether the Employee is or was regularly assigned to hazardous duty; (v) a survivor's pension that is not a "killed in the line of duty" survivor's pension; (vi) request for service credit; and (vii) initiation or termination of Deferred Retirement Option Plan participation.
26. "Rules" means these Model Uniform Rules of Local Board Procedure authorized by A.R.S. § 38-847(F).
27. "Secretary" means the person so designated and elected pursuant to A.R.S. § 38-847(M), who is charged with keeping a record and preparing agendas, Minutes and Decisions of all Hearings and Rehearings of the Local Board.
28. "State Agency Local Board" means any Local Board where the sponsoring Employer is an agency, board, commission, department or other administrative unit of the State of Arizona. An example of a State Agency Local Board is the Department of Public Safety PSPRS Local Board.
29. "Subcommittee" means a group of no more than two Local Board members appointed by the Board Chair to undertake Local Board business.

B. Purpose and Scope of Procedures

1. Board Responsibility. Pursuant to A.R.S. § 38-847(D), the Local Board is responsible for deciding all questions of eligibility and service credits, and determining the amount, manner and time of payment of any benefits under the Plan. The Board of Trustees cannot pay any benefits under the Plan without the direction and approval of the Local Board.
2. Scope. These Rules govern all Claims before the Local Board for Decision, effective for any Claims brought, and any Hearing and Rehearing held, after the effective date of adoption of these Rules by the Local Board.
3. Conflict. These Rules are authorized by A.R.S. § 38-847(F) and supplement all authority of the Local Board specified in that statute. Should any of these Rules conflict with any provision of A.R.S. § 38-847 or any other Arizona law, the provisions of Arizona law shall control. These procedures govern State Agency Local Boards as well as Political Subdivision Local Boards. However, State Agency Local Boards may be subject to additional laws as provided by Title 41, Ch. 4, Article 6.
4. No Legal Advice. These Rules do not constitute legal advice. Local Boards are encouraged to consult with their independent attorney to resolve questions of law.

C. Composition of the Board and Conduct of Meetings

1. Composition. The membership of each Local Board is determined by whether the participating employer is a political subdivision, Indian tribal nation, state agency, non-profit corporation, joint powers authorities or fire district, as set forth in A.R.S. § 38-847(A).
2. Chair. The provisions for electing a Chair are found in A.R.S. § 38-847(A). For political subdivisions and Indian tribal nations, the Mayor or Chief Elected Official or a designee shall serve as Chair of their respective Local Boards. For state agencies and nonprofit corporations, the Local Board shall elect a Chair. For fire districts, the chairperson of the fire district governing board or the chairperson's designee shall serve as Chair.
3. Secretary. Pursuant to A.R.S. § 38-847(M), the Local Board shall elect a Secretary who may, but need not, be a member of the Local Board.
4. Quorum. A quorum consists of a majority of the statutory membership of the Local Board. A.R.S. § 1-216(B). For a Local Board comprised of five (5) members, a quorum for the purpose of doing any business is generally three (3) members.
5. Meetings, Minutes and Decisions. Meetings are generally held at, [REDACTED] but can be held at any time upon the call of the Chair, any two members of the Local Board, or the Secretary of the Local Board, with appropriate notice to the members of the Local Board and the public. Each Local Board shall meet at least twice a year.
 - a. Meetings are held at San Luis Council Chambers, City Hall, 1090 E. Union Street, San Luis, Arizona.
 - b. The Secretary shall provide an agenda to the Local Board members in advance of any Meeting, describing the business to be addressed at such Meeting. The content of the agenda shall comply with the Open Meeting Law.
 - c. Notice of all Meetings of the Local Board shall be given, and all Meetings and any executive sessions shall be conducted, in conformance with the Open Meeting Law.
 - d. Provided the quorum is met, a majority vote of Local Board members present and eligible to vote shall govern any action taken.
 - i. Local Board members not present in person may attend by telephone or other electronic means permitting meaningful participation in accordance with the Open Meeting Law.
 - e. The Secretary shall cause appropriate Minutes to be taken of Local Board Meetings, and an electronic recording may be made of Meetings to facilitate preparation of such Minutes.
 - i. Such electronic recording will be maintained at least until Minutes have been transcribed and approved by the Local Board.

- ii. So long as such action is in accordance with a Local Board's records retention, storage and destruction policy, the Secretary may destroy the electronic recording of a Local Board Meeting after the Minutes of such Meeting have been approved. The Secretary will prepare and retain a certificate of destruction when any electronic recordings are destroyed.
 - f. The Secretary shall forward to the Board of Trustees (in care of the Administrator) a copy of each Local Board meeting minutes which include the Decision(s) on a Claim no later than twenty (20) business days after the Local Board takes action on such Claim, pursuant to A.R.S. § 38-847(G). Decisions shall be sent by certified mail to the Administrator as required by A.R.S. § 38-847(H)(2). As required by A.R.S. § 38-847(G), a Decision shall contain, at minimum: (i) the name of the member affected by the Local Board's action; (ii) a description of the action taken; and (iii) an explanation of the reasons supporting the Local Board's action, and (iv) all documents submitted to the Local Board for the action taken including the reports of a medical board.
 - g. Unless the Claimant is present at a Meeting at which the Local Board announces its Decision on a Claim, at the same time that the Secretary forwards the Decision to the Administrator, the Secretary shall forward the Local Board's Decision to the Claimant via certified mail, pursuant to A.R.S. § 38-847(H)(1).
 - h. The Secretary shall forward all Minutes to the Board of Trustees, in care of the Administrator, within twenty (20) days after each Local Board Meeting, and forward all necessary communications to the Board of Trustees, in care of the Administrator, pursuant to A.R.S. § 38-847(M).
6. Documentation. In a location separate from any Personnel or Department files, the Local Board Secretary shall maintain files for each Claimant, containing public and confidential documents presented to the Local Board.

D. Pre-Membership Physical

1. Examination. Pursuant to A.R.S. § 38-859(A)(1), the Local Board shall contract with a physician or clinic to conduct a Pre-Membership Physical of Employees, for the purpose of identifying physical or mental conditions or injuries, which existed or occurred prior to an Employee's date of membership in the Plan. The physician or clinic conducting a Pre-Membership Physical may be the regular employee or contractee of the Employer.
2. Appointment. The Employer (or the Employee's department, whether Fire or Police) or the Secretary shall coordinate appointments for the Employee's Pre-Membership Physical.
3. Report. The physician or clinic retained to conduct an Employee's Pre-Membership Physical shall provide a written report of the results of the Pre-Membership Physical to the Secretary within 10 days after the examination. The Secretary shall file the report as a permanent record, as required by A.R.S. § 38859(E).

4. No Pre-Existing Condition. If the physician or clinic's report on an Employee with respect to his pre-membership condition concludes that the Employee has no pre-existing condition, the Secretary shall file the report as a permanent record, as required by A.R.S. § 38-859(E).
5. Finding of Pre-Existing Condition. If the physician or clinic's report on an Employee with respect to his pre-membership condition concludes that the Employee has a pre-existing condition:
 - a. The Secretary shall notify the Employee that the physician or clinic has reported that the Employee has a pre-existing condition. The Employee shall have 30 days to submit additional documentation or comments to the Secretary before the physician or clinic's report is placed on an agenda for the Local Board's consideration.
 - b. Reports concerning an Employee's pre-existing condition shall be placed on the Meeting agenda for recognition by the Local Board.
 - c. The Secretary shall provide the Local Board with any additional documentation or comments submitted by an Employee regarding a physician or clinic's conclusion that an Employee has a pre-existing condition.
 - d. The Local Board shall review the physician or clinic's report and any additional documentation submitted by the Employee at a Meeting. After review of the relevant documents, the Local Board will take any action the Local Board deems necessary and appropriate.
 - e. The Secretary shall file all reports concerning an Employee's pre-existing condition(s) as a permanent record, as required by A.R.S. § 38-859(E), along with any additional documentation and comments provided by the Employee, and appropriate records of any actions or determinations by the Local Board with respect to the same. In the event a Member whose Pre-Membership Physical revealed a pre-existing condition applies for an accidental, catastrophic, ordinary, or temporary disability pension, all such documentation related to the Member's pre-existing condition will be presented to the Local Board. If the Local Board determines that a Member's disability resulted from a physical or mental condition or injury, which existed or occurred prior to the Member's date of membership in the Plan, the Member shall not qualify for an accidental, catastrophic, ordinary, or temporary disability pension.

E. Initial Decision

1. Submitting Claims. A Claimant may request that the Local Board issue an Initial Decision by presenting an application for benefits or service credit to the Secretary, using the prescribed Plan forms.
2. Content of Claims. If desired, a Claimant may supplement the application for benefits or service credit by submitting a letter to the Secretary. In order for any supplemental letter to be considered by the Local Board, such letter shall set forth: (i) the name and address of the Claimant; (ii) the name and address of the Claimant's attorney, if applicable; (iii) a brief statement of the facts forming the basis of the Claim, including any evidence relevant to the Local Board's Decision on the Claim; and (iv) the precise relief sought by the Claimant from the Local Board.

3. Routine Claims; Consent Agenda. A Local Board may authorize its Secretary to determine whether a Claim is to be treated by the Local Board as Routine or as Non-Routine, and to present Routine Claims as a "Consent Agenda" item. Ordinarily, the Secretary does not provide Notice of a Hearing to Claimants for Routine Claims on the Consent Agenda, because the Local Board generally approves Consent Agenda items summarily. If a Routine Claim on the Consent Agenda warrants discussion by the Local Board, the Claim may be deferred to a future Hearing in order to provide Notice to the Claimant.
4. Non-Routine Claims. All Non-Routine Claims are subject to this Section E concerning an Initial Decision. However, more detailed procedures for certain Non-Routine Claims, specifically disability benefit applications and reexamination of disability recipients, are set forth in Sections F and G of these Rules. Other Non-Routine Claims shall be placed on the agenda for consideration by the Local Board, after appropriate Notice to the Claimant.
5. Deadline for Scheduling a Hearing on Routine and Non-Routine Claims.
 - a. Hearings are held at Meetings as provided by Section C(5) of these Rules.
 - b. Unless the Claimant and all other parties to the Claim otherwise agree, the Local Board shall commence a Hearing on a Routine or Non-Routine Claim within ninety (90) days of its receipt of a Claim, pursuant to A.R.S. § 38-847(D)(3).
 - c. If the Local Board does not commence a Hearing on a Claim within ninety (90) days of its receipt of the Claim:
 - i. The Claimant shall notify the Administrator and Secretary by letter sent by certified mail that the Local Board has failed to convene a Hearing within ninety (90) days of the filing of a Claim.
 - ii. As provided by A.R.S. § 38-847(D)(3), the relief demanded by the Claimant is deemed granted and approved by the Local Board. The granting and approval of this relief is considered final and binding unless a timely request for Rehearing or appeal is made, or unless the Board of Trustees determines that granting the relief requested would violate the Internal Revenue Code or threaten to impair the Plan's status as a qualified plan under the Internal Revenue Code. If the Board of Trustees determines that granting the requested relief would violate the Internal Revenue Code or threaten to impair the Plan's status as a qualified plan, the Board of Trustees may refuse to grant the relief by issuing a written determination, sent certified mail to the Local Board and the Claimant. The written determination issued by the Board of Trustees is subject to judicial review pursuant to Title 12, Chap. 7, Article 6.

- iii. As provided in A.R.S. § 38-847(H), the Board of Trustees may request a Rehearing within sixty (60) days after receiving notice from the Claimant by letter sent by certified mail that the Local Board has failed to convene a Hearing within ninety (90) days of the filing of a Claim. However, if the relief deemed granted and approved by the Local Board violates the Internal Revenue Code or threatens to jeopardize the Plan's status as a qualified plan under the Internal Revenue Code, no limitation period for the Board of Trustees to seek a Rehearing applies.
6. Issuance of Decision. When a Hearing is held within the deadlines set forth in Section E(5) of these Rules, the Secretary shall forward the Decision, Minutes and other necessary communications, as provided in Section C(5)(f)-(h) of these Rules.
7. Finality of Decision. Pursuant to A.R.S. § 38-847, any Decision that is not inconsistent with the provisions of the Plan and the Internal Revenue Code shall be final, conclusive and binding on the Claimant and the Plan, unless a timely application for a rehearing is filed as provided in Section H of these Rules, or an appeal is filed. However, the Board of Trustees may not implement and comply with any Decision that does not comply with the Internal Revenue Code or that threatens to jeopardize the Plan's status as a qualified plan under the Internal Revenue Code, and under such circumstances, no limitation period for the Board of Trustees to seek a rehearing of a Decision applies. A final decision may be appealed to the Yuma County Superior Court for the State of Arizona within the periods specified in, and the manner provided by, the Arizona Revised Statutes (see A.R.S. § 12-901 *et seq.*) and the rules adopted by the Yuma County Superior and Appellate Courts of the State of Arizona.

F. Disability Benefit Applications

1. Disability Application. Upon presentation of a properly completed application for any of the disability pensions authorized by law, the Secretary will determine whether the Claimant has provided complete documentation supporting the Claim referenced in the application. If the information is incomplete, the Secretary shall request that the Claimant provide additional documentation and may assist the Claimant in identifying deficiencies or incomplete items in the application. The Secretary shall also obtain from the Employer any documentation contained in workers' compensation records. A confidential packet of medical information on the Claimant shall be prepared for distribution to Local Board members. When the Claimant's application is complete, the Claim shall be placed, as a separate item, on the agenda for a Meeting, pursuant to Section E(5) of these Rules.
2. Initial Hearing. At the initial Hearing on a Claim for disability benefits, the Local Board will determine whether the medical and other documentation submitted is sufficient for the Local Board to conclude that the statutory prerequisites are satisfied by the Claimant. If the statutory prerequisites are satisfied, pursuant to A.R.S. § 38-859(A), the Local Board shall direct that a medical board be appointed to conduct an examination of the Claimant and to report to the Local Board the results of that examination. If the statutory prerequisites are not

satisfied, the Local Board may deny the Claim based on a lack of evidence, either medical or otherwise, such as the Claimant's continued work status or the Claimant's performance of a reasonable range of duties. In the alternative, the Local Board may continue the Hearing on the matter to a date and time when any additional documentation requested by the Board is available.

3. Independent Medical Board. Pursuant to A.R.S. § 38-859(B), medical boards appointed pursuant to A.R.S. § 38-859(A)(2)-(5) shall be composed of a designated physician or a clinic other than a regular employee or contractee of the employer.
4. Mental Examinations. In the event of a psychological disability application, the medical board will consist of a doctor of medicine who is a psychiatrist or has a specialty in psychiatry. The psychiatrist shall issue a report containing his/her conclusions to the Local Board.
5. Prompt Hearing. If a medical board is appointed, the Secretary shall reconvene the Hearing at the first feasible Meeting after the Local Board members' receipt of the medical board's report, unless the Claimant requests in writing otherwise.
6. Disability Findings. Pursuant to A.R.S. § 38-859(C), a finding of disability shall be based on medical evidence provided by the medical board appointed by the Local Board. The Local Board shall resolve material conflicts in the medical evidence. If required, the Local Board may employ other physicians or clinics to report on special cases. With the approval of the Local Board, a physician or clinic employed by the Local Board may employ occupational specialists to assist the physician or clinic in rendering an opinion.
7. Approval of Disability Claim. If a Claim for disability benefits is approved by the Local Board, the Secretary will obtain Employer certification of the Claimant's employment termination date and indicate the determination of the Board on the disability pension on proscribed Plan forms. If the Board Secretary cannot obtain certification of the termination of the Claimant's employment within forty-five (45) days after the Local Board's approval, the Claimant's application for disability benefits will be considered withdrawn. Until such time as the Claimant has terminated employment with his Employer, the Local Board shall not consider any further Claim by the Claimant for disability benefits.
8. Denial of Disability Claim. If a Claim for disability benefits is denied by the Local Board, and the Claimant is not present at the Meeting, the Secretary will notify the Claimant in writing by certified mail of the Decision of the Board, the reasons for the Decision, and the Claimant's rights to a Rehearing.

G. Reexamination of Disability Recipients

1. Catastrophic Disability Benefits Pursuant to A.R.S. § 38-844(F)

- a. Sixty (60) months after approval of a Catastrophic Disability, the Local Board must undertake a re-evaluation of a Member receiving catastrophic disability benefits to determine whether the Member remains qualified for such benefits, as specified in A.R.S. § 38-844(F).
- b. After the initial sixty (60) month review, the Local Board is empowered to undertake an annual reevaluation of Members receiving catastrophic disability benefits, who, had they remained in employment, would not have attained 25 years of service.
- c. On an on-going basis, the Secretary will prepare a list of Members receiving catastrophic disability benefits who may be required to undergo an annual reevaluation pursuant to Section G(1)(b) of these Rules.
- d. At the direction of the Chair, a Subcommittee of the two elected members of the Local Board shall review the list of Members prepared pursuant to Section G(1)(c), and report the Subcommittee's recommendations regarding medical reevaluation of such Members to the Local Board.
- e. The Secretary shall place the issue of re-examination of a Member receiving catastrophic disability benefits on an appropriate Meeting agenda as a separate item.

2. Accidental and Ordinary Disability Benefits Pursuant to A.R.S. § 38-844(E).

- a. In its discretion, the Local Board may require Members receiving accidental or ordinary disability benefits to undergo an annual medical examination to determine whether they are still disabled and therefore, qualified for continued disability benefits.
- b. On an on-going basis, the Secretary will prepare a list of Members receiving accidental and ordinary disability benefits who may be required to undergo an annual medical reevaluation pursuant to Section G(2)(a) of these Rules.
- c. At the direction of the Chair, a Subcommittee of the two elected Members of the Local Board shall review the list of Members prepared pursuant to Section G(2)(b), and report the Subcommittee's recommendations regarding medical reevaluation of such Members to the Local Board.

3. Medical Boards Appointed Pursuant to A.R.S. § 38-859.

- a. The Local Board shall appoint a medical board to examine any Member required to obtain, or selected for, reevaluation pursuant to Sections G(1), (2) of these Rules. If the Member refuses to submit to the medical board reevaluation, the Member's disability shall be considered to have ceased and the Member's disability pension terminated.
- b. A formal report of the medical board on the results of the reevaluations referenced in Section G(3)(a) above shall be submitted to the Local Board. The Local Board shall review any such report at the first scheduled Meeting after receipt of the report, and shall take any action warranted, as permitted by the relevant statutes.

H. Rehearings

1. Application for Rehearing.
 - a. A Claimant's application for Rehearing must be filed within sixty (60) days after the Claimant receives notification of the Initial Decision by certified mail, by attending the Meeting at which the Initial Decision is rendered, or by receiving benefits from the Plan pursuant to the Initial Decision, whichever occurs first.
 - b. The Board of Trustees's application for Rehearing must be filed within sixty (60) days after the Board of Trustees receives a copy of the Initial Decision by certified mail.
2. Rehearings Granted. The Local Board will conduct a Rehearing of any matter upon proper and timely application by a Claimant or the Board of Trustees, pursuant to A.R.S. Section 38-847(H).
3. Preparation of Preliminary Record. Upon receipt of a proper and timely application for Rehearing, the Secretary shall prepare a packet consisting of all documents and other tangible items of evidence made available to the Local Board with respect to the underlying issues. The Secretary may obtain a written transcript of any previous proceedings of the Local Board in connection with the matter, for inclusion in such packet. The Rehearing packet shall be made available to Local Board members and shall be provided to all Parties to the Rehearing. This packet of materials shall constitute the preliminary record for the Rehearing.
4. Scheduling of Rehearing. When the preliminary record is complete, the Secretary will schedule the Rehearing for the next scheduled Meeting or for such other date and time as may be determined but no later than 90 (ninety) days after receipt of either the Claimant's or the Board of Trustees' application/request for Rehearing. Rehearings are not subject to the time limitations set forth in Section E(5) of these Rules.
5. Local Board Action on Rehearing. At or after the conclusion of the Rehearing, the Local Board may vote to uphold, rescind or modify its Initial Decision.
6. Issuance of Decision on Rehearing. When a Rehearing is held, the Secretary shall forward the Decision on Rehearing, Minutes of Rehearing and other necessary communications, as provided in Section C(5)(f)-(h) of these Rules.
7. Finality. Pursuant to A.R.S. § 38-847, any Decision on Rehearing that is not inconsistent with the provisions of the Plan and the Internal Revenue Code shall be final, conclusive and binding on the Claimant and the Plan, unless a timely appeal is filed. However, the Board of Trustees may not implement and comply with any Decision on Rehearing that does not comply with the Internal Revenue Code or that threatens to jeopardize the Plan's status as a qualified plan under the Internal Revenue Code. A final Decision on Rehearing may be appealed to the Yuma County Superior Court for the State of Arizona within the periods specified in, and the manner provided by, the Arizona Revised Statutes (see A.R.S. § 12-901 et seq.) and the rules adopted by the Yuma County Superior and Appellate Courts of the State of Arizona.

I. General Provisions Applicable to All Hearings and Rehearings

1. Review of Medical Records. The Local Board shall review and discuss any confidential medical records in executive session only, unless the Claimant or Member waives the confidentiality requirement with respect to any confidential medical records by completing a confidentiality waiver.
2. Exclusion of Evidence. The Presiding Officer may preclude the presentation of argumentative, repetitious or irrelevant facts or questioning in any proceeding on a Claim.
3. Argument and Evidence. The Presiding Officer shall rule on all evidentiary or procedural objections. Each Party is entitled to make an opening statement. The Party with the burden of proof shall begin the presentation of evidence, unless the Parties otherwise agree or the Presiding Officer determines that another order would be more expeditious or appropriate and would result in no material prejudice. The Presiding Officer shall determine the order of witness examinations, which shall be such as will expedite the Hearing or Rehearing and insure the proceeding is fair. The Presiding Officer may, but is not required to, administer oaths to witnesses and each Party. Each Party is entitled to present a closing argument in the order determined by the Presiding Officer. Each Party is entitled to be represented by counsel, submit evidence, offer arguments, and cross examine witnesses.
4. Informal Proceedings. All Hearings and Rehearings shall be conducted in an informal manner and without adherence to the rules of procedure or evidence required in judicial proceedings. The manner of conducting the Hearing or Rehearing, rulings on evidentiary or procedural objections, and the failure to adhere to rules of procedure or evidence required in judicial proceedings shall not be grounds for reversing a Decision of the Local Board, provided substantial evidence supports such order or Decision.
5. Notice of the Truth of Widely-Known and Accepted Facts. The Presiding Officer may take notice of the truth of certain widely known and accepted facts, including generally recognized technical, statistical, actuarial or scientific facts within the Local Board's specialized knowledge. Parties shall be notified, either before or during the Hearing or Rehearing, of any widely known and generally accepted facts noticed as true, including any staff memoranda or data. Parties shall be afforded an opportunity to contest any material so noticed. The Local Board's experience, technical competence and specialized knowledge may be utilized in its evaluation of all evidence. The Local Board shall be entitled to consider and rely on as true information furnished by the Employer, Administrator, the Local Board's independent legal counsel or the Plan's actuary.

6. Failure to Appear at Hearing. In the event a Claimant (and the Claimant's counsel, if any) fails to appear at a duly noticed Hearing or Rehearing, in its discretion, the Local Board may enter a Decision by default or vacate the Hearing or Rehearing. If a witness fails to appear at a duly noticed Hearing or Rehearing, in his discretion, the Presiding Officer may exclude the witness' testimony or reschedule the Hearing or Rehearing.
7. Limitation of Issues. All Hearings and Rehearings shall be limited to matters referenced in the Claim and any request for Rehearing filed by any Party.
8. Record of Proceedings. All Hearings and Rehearings shall be recorded by electronic means and at the Local Board's expense. A copy of the recorded Hearing or Rehearing will be provided to the Claimant and all other interested Parties upon request. Parties are responsible for obtaining their own transcription of a recorded Hearing or Rehearing, although a Local Board may provide such a transcription in its discretion. In addition to any electronic recording of the proceedings, the Local Board shall include all relevant written records as part of the official record of the Hearing or Rehearing.
9. Evidence on Claims. The Claimant and Administrator shall be afforded equal time to state their positions.
10. Subpoenas; Depositions. To facilitate the collection and presentation of evidence with respect to any matter before the Local Board, the Presiding Officer may authorize subpoenas and depositions of witnesses.
11. Consultation among Members. The Presiding Officer may consult on the record with the other members of the Local Board. The Local Board may consult in executive session with the Local Board's legal counsel so long as all requirements of the Open Meeting Law are satisfied. The Local Board may also go into executive session for any lawful reason, including the need to preserve the confidentiality of medical information. However, all Decisions of the Local Board shall be made in open, public session of the Local Board.
12. Bifurcation of Issues/Hearing. In connection with any Claim, the Presiding Officer is empowered to bifurcate (*i.e.*, separate into two or more) issues presented to the Local Board for resolution, or set multiple Hearings or Rehearings in a single case.
13. Submission of Evidence. The Claimant must submit to the Secretary within ten (10) working days of the Hearing or Rehearing any documents the Claimant wishes to introduce into the record, including doctor reports and other written evidence. Documents received by the Secretary less than ten (10) working days before a Hearing or Rehearing may cause a delay in the Hearing or Rehearing. Information and documents presented on the date of the Hearing or Rehearing will be reason for the Presiding Officer to call for a motion to continue the Hearing or Rehearing to a later date.
14. Public Participation. The Open Meeting Law governs public participation in Hearings and Rehearings.

15. No Rehearing on Remand. A Hearing before the Local Board on a matter remanded from the Yuma County Superior Court is not subject to a Rehearing before the Local Board. However, the Local Board may consider new evidence or review items remanded by the Yuma County Superior Court.

The undersigned Chair and Secretary of the San Luis Police Department Public Safety Personnel Local Retirement Board certify that the foregoing Procedures were duly adopted by the Board at a meeting duly called and held on the date specified below.

Chair

Secretary

Dated

Dated

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. § 38-847

§ 38-847. Local boards

Effective: August 6, 2016

[Currentness](#)

A. The administration of the system and responsibility for making the provisions of the system effective for each employer are vested in a local board. The department of public safety, the Arizona game and fish department, the department of emergency and military affairs, the university of Arizona, Arizona state university, northern Arizona university, each county sheriff's office, each county attorney's office, each county parks department, each municipal fire department, each eligible fire district, each community college district, each municipal police department, the department of law, the department of liquor licenses and control, the Arizona department of agriculture, the Arizona state parks board, each Indian reservation police agency and each Indian reservation firefighting agency shall have a local board. A nonprofit corporation operating pursuant to §§ 28-8423 and 28-8424 shall have one local board for all of its members. Each local board shall be constituted as follows:

1. For political subdivisions or Indian tribes, the mayor or chief elected official or a designee of the mayor or chief elected official approved by the respective governing body as chairman, two members elected by secret ballot by members employed by the appropriate employer and two citizens, one of whom shall be the head of the merit system, or the head's designee from among the other members of the merit system, if it exists for the group of members, appointed by the mayor or chief elected official and with the approval of the governing body of the city or the governing body of the employer. The appointed two citizens shall serve on both local boards in a city or Indian tribes where both fire and police department employees are members.
2. For state agencies and nonprofit corporations operating pursuant to §§ 28-8423 and 28-8424, two members elected by secret ballot by the members employed by the appropriate employer and three citizens appointed by the governor. Each state agency local board shall elect a chairman.
3. For fire districts, the chairperson of the fire district governing board or the chairperson's designee, two members elected by secret ballot by members employed by the fire district and two citizens appointed by the chairperson of the fire district governing board, one of whom is a resident of the fire district and one of whom has experience in personnel administration but who is not required to be a resident of the fire district.
4. For joint powers authorities organized pursuant to § 48-805.01, the joint powers authority board chairman or a designee

approved by the governing body, two members elected by secret ballot by members employed by the joint powers authority and two citizens, one of whom is a resident of one of the partner entities and one of whom has experience in personnel administration but who is not required to be a resident of a partner entity.

B. On the taking effect of this system for an employer, the appointments and elections of local board members shall take place with one elective and appointive local board member serving a term ending two years after the effective date of participation for the employer and other local board members serving a term ending four years after the effective date. Thereafter, every second year, and as a vacancy occurs, an office shall be filled for a term of four years in the same manner as previously provided.

C. Each local board shall be fully constituted pursuant to subsection A of this section within sixty days after the employer's effective date of participation in the system. If the deadline is not met, on the written request of any member who is covered by the local board or the employer to the board of trustees, the board of trustees may appoint all vacancies of the local board pursuant to subsection A of this section and designate whether each appointive position is for a two year or four year term. If the board of trustees cannot find individuals to serve on the local board who meet the requirements of subsection A of this section, the board of trustees may appoint individuals to serve as interim local board members until qualified individuals are appointed or elected. Each local board shall meet at least twice a year. Each member of a local board, within ten days after the member's appointment or election, shall take an oath of office that, so far as it devolves on the member, the member shall diligently and honestly administer the affairs of the local board and that the member shall not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the system.

D. Except as limited by subsection E of this section, a local board shall have such powers as may be necessary to discharge the following duties:

1. To decide all questions of eligibility for membership, service credits and benefits and determine the amount, manner and time of payment of any benefits under the system.

2. To prescribe procedures to be followed by claimants in filing applications for benefits.

3. To make a determination as to the right of any claimant to a benefit and to afford any claimant or the board of trustees, or both, a right to a rehearing on the original determination. Except as otherwise required by law, unless all parties involved in a matter presented to the local board for determination otherwise agree, the local board shall commence a hearing on the matter within ninety days after the date the matter is presented to the local board for determination. If a local board fails to commence a hearing as provided in this paragraph, on a matter presented to the local board for determination, the relief demanded by the party petitioning the local board is deemed granted and approved by the local board. The granting and approval of this relief is considered final and binding unless a timely request for rehearing or appeal is made as provided in this article, unless the board of trustees determines that granting the relief requested would violate the internal revenue code¹ or threaten to impair the system's status as a qualified plan under the internal revenue code. If the board of trustees determines that granting the requested relief would violate the internal revenue code or threaten to impair the system's status as a qualified plan, the board of trustees may refuse to grant the relief by issuing a written determination to the local board and the party petitioning the local board for relief. The decision by the board of trustees is subject to judicial review pursuant to title 12, chapter 7, article 6.²

4. To request and receive from the employers and from members such information as is necessary for the proper administration of the system and action on claims for eligibility for membership and benefits, and to forward such information to the board of trustees.

5. To distribute, in such manner as the local board determines to be appropriate, information explaining the system received from the board of trustees.

6. To furnish the employer, the board of trustees and the legislature, on request, with such annual reports with respect to the administration of the system as are reasonable and appropriate.

7. To receive and review the actuarial valuation of the system for its group of members.

8. To receive and review reports of the financial condition and of the receipts and disbursements of the fund from the board of trustees.

9. To appoint medical boards as provided in [§ 38-859](#).

10. To sue and be sued to effectuate the duties and responsibilities set forth in this article.

E. A local board shall have no power to add to, subtract from, modify or waive any of the terms of the system, change or add to any benefits provided by the system or waive or fail to apply any requirement of eligibility for membership or benefits under the system. Notwithstanding any limitations periods imposed in this article, including subsection D, paragraph 3 and subsections G and H of this section, if the board of trustees determines a local board decision violates the internal revenue code or threatens to impair the system's status as a qualified plan under the internal revenue code, the local board's decision is not final and binding and the board of trustees may refrain from implementing or complying with the local board decision.

F. A local board, from time to time, shall establish and adopt such rules as it deems necessary or desirable for its administration. All rules and decisions of a local board shall be uniformly and consistently applied to all members in similar circumstances. If a claim or dispute is presented to a local board for determination but the local board has not yet adopted uniform rules of procedure for adjudication of the claim or dispute, the local board shall adopt and use the model uniform rules of local board procedure that are issued by the board of trustees' fiduciary counsel to adjudicate the claim or dispute.

G. Except as otherwise provided in this article, any action by a majority vote of the members of a local board that is not inconsistent with the provisions of the system and the internal revenue code shall be final, conclusive and binding on all persons affected by it unless a timely application for a rehearing or appeal is filed as provided in this article. No later than twenty days after taking action, the local board shall submit to the board of trustees the minutes from the local board meeting that include the name of the member affected by its decision, a description of the action taken and an explanation of the reasons and all documents submitted to the local board for the action taken, including the reports of a medical board. The

board of trustees may not implement and comply with any local board action that does not comply with the internal revenue code or that threatens to jeopardize the system's status as a qualified plan under the internal revenue code.

H. A claimant or the board of trustees may apply for a rehearing before the local board within the time periods prescribed in this subsection, except that if a decision of a local board violates the internal revenue code or threatens to jeopardize the system's status as a qualified plan under the internal revenue code, no limitation period for the board of trustees to seek a rehearing of a local board decision applies. An application for a rehearing shall be filed in writing with a member of the local board or its secretary within sixty days after:

1. The applicant-claimant receives notification of the local board's original action by certified mail, by attending the meeting at which the action is taken or by receiving benefits from the system pursuant to the local board's original action, whichever occurs first.

2. The applicant-board of trustees receives notification of the local board's original action as prescribed by subsection G of this section by certified mail.

I. A hearing before a local board on a matter remanded from the superior court is not subject to a rehearing before the local board.

J. Decisions of local boards are subject to judicial review pursuant to title 12, chapter 7, article 6.

K. When making a ruling, determination or calculation, the local board shall be entitled to rely on information furnished by the employer, a medical board, the board of trustees, independent legal counsel or the actuary for the system.

L. Each member of a local board is entitled to one vote. A majority is necessary for a decision by the members of a local board at any meeting of the local board.

M. The local board shall adopt such bylaws as it deems desirable. The local board shall elect a secretary who may, but need not, be a member of the local board. The secretary of the local board shall keep a record and prepare minutes of all meetings in compliance with chapter 3, article 3.1 of this title³ and forward the minutes and all necessary communications to the board of trustees as prescribed by subsection G of this section.

N. The fees of the medical board and of the local board's independent legal counsel and all other expenses of the local board necessary for the administration of the system shall be paid by the employer and not the board of trustees or system at such rates and in such amounts as the local board shall approve. Legal counsel that is employed by the local board is independent of the employer and any employee organization or member and owes its duty of loyalty only to the local board in connection with its representation of the local board.

O. The local board shall issue directions to the board of trustees concerning all benefits that are to be paid from the employer's account pursuant to the provisions of the fund. The local board shall keep on file, in such manner as it may deem convenient or proper, all reports from the board of trustees and the actuary.

P. The local board and the individual members of the local board shall be indemnified from the assets of the employer for any judgment against the local board or its members, including attorney fees and costs, arising from any act, or failure to act, made in good faith pursuant to the provisions of the system, including expenses reasonably incurred in the defense of any claim relating to the act or failure to act.

Credits

Added by Laws 1968, Ch. 85, § 1. Amended by Laws 1970, Ch. 211, § 9; Laws 1972, Ch. 163, § 40; Laws 1980, Ch. 146, § 5; Laws 1982, Ch. 4, § 1; Laws 1982, Ch. 111, § 1; Laws 1983, Ch. 300, § 12; Laws 1986, Ch. 88, § 2; Laws 1988, Ch. 19, § 4, eff. March 31, 1988; Laws 1989, Ch. 197, § 2; Laws 1990, Ch. 411, § 3; Laws 1992, Ch. 340, § 1; Laws 1992, Ch. 341, § 3; Laws 1994, Ch. 130, § 2; Laws 1995, Ch. 205, § 6; Laws 1997, Ch. 1, § 427, eff. Oct. 1, 1997; Laws 1997, Ch. 239, § 13; Laws 1999, Ch. 327, § 24; Laws 2000, Ch. 329, § 2; Laws 2001, Ch. 353, § 3; Laws 2008, Ch. 59, § 1; Laws 2010, Ch. 118, § 7; Laws 2010, Ch. 200, § 41, eff. April 28, 2010; Laws 2011, Ch. 27, § 26; Laws 2011, Ch. 347, § 4; Laws 2012, Ch. 136, § 7; Laws 2013, Ch. 203, § 7; Laws 2013, Ch. 216, § 5; Laws 2016, Ch. 323, § 2.

Footnotes

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

² Section 12-901 et seq.

³ Section 38-431 et seq.

A. R. S. § 38-847, AZ ST § 38-847

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

End of Document

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Notes Of Decisions (14)

Local boards

Local boards - In general

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.

Local boards - Reemployment

Fund manager of public safety personnel retirement system must immediately inform local board under which benefits originated of any benefit payments which the fund manager thinks are being improperly continued during the reemployment of a retired member, such notification will afford local board the opportunity to correct the matter, and fund manager could then proceed to recover any wrongfully paid benefits. Op.Atty.Gen. No. 177-237, [1977 WL 22161](#).

Reemployment, local boards

Fund manager of public safety personnel retirement system must immediately inform local board under which benefits originated of any benefit payments which the fund manager thinks are being improperly continued during the reemployment of a retired member, such notification will afford local board the opportunity to correct the matter, and fund manager could then proceed to recover any wrongfully paid benefits. Op.Atty.Gen. No. 177-237, [1977 WL 22161](#).

Department of public safety board

The governor is authorized to appoint three members to the department of public safety board at his discretion. Op.Atty.Gen. No. 180-78, [1980 WL 88476](#).

Eligibility

Drug control district special agents who joined the public safety personnel retirement system prior to August 27, 1977 were entitled to participate in the system, but whether post-August 27, 1977 district employee should continue in the system was a question left to the local board's judgment. Op.Atty.Gen. No. 180-191, [1980 WL 28072](#).

Arizona drug control district special agents who joined the public safety personnel retirement system between 1975 and 1977 would be entitled to participate in the system, and the appropriate local retirement board would have authority to determine whether district employees who joined the system between 1977 and 1980 were eligible to participate in the system or should have been covered under the state retirement plan, but district employees hired after July 31, 1980, would not be entitled to participate in the system. Op.Atty.Gen. No. 180-191, [1980 WL 28072](#).

Election of benefits

Public employer who, prior to his retirement, has worked under several systems, including public safety personnel retirement system, has right to elect benefits under one specific system under which he has worked, and all his benefits and his widow's benefits would then be computed under the specific system elected. Op.Atty.Gen. No. 69-8.

Disability board of appeals

Public safety personnel retirement system disability board of appeals did not have jurisdiction under § 38-847.01 (repealed, see, now, this section) to hear questions of whether or not employee was eligible for benefits; all disability board was empowered to decide was whether local board was correct in determining that applicant for benefits was or was not disabled under law, and if so, nature, extent, cause, and type of disability. [Fund Manager, Public Safety Personnel Retirement System v. Tucson Police Public Safety Personnel Retirement System Bd. \(App. Div.2 1983\) 137 Ariz. 536,672 P.2d 201.](#) [Public Employment](#) 483

Membership

Local police board had no power to find that employee who had withdrawn his contributions from public safety personnel retirement system could still be member entitled to benefits under system, in that local board had no power to modify or extend statutory system. [Fund Manager, Public Safety Personnel Retirement System v. Tucson Police and Fire Public Safety Personnel Retirement Systems Bd. \(App. Div.2 1985\) 147 Ariz. 1, 708 P.2d 92.](#) [Municipal Corporations](#) 187(4); [Public Employment](#) 393

A retired employee of the Game and Fish Department is not a member of the Public Safety Personnel Retirement System and, therefore, is not eligible to seek election to the Local Public Safety Retirement Board. [Op.Atty.Gen. No. 188-099, 1988 WL 249674.](#)

Indemnification

Use of words “in good faith pursuant to the provisions of the system” in subsection of this section providing for indemnification of local retirement boards by state retirement fund expressly establishes indemnification for honest mistakes in performance of adjudicative and administrative responsibilities. [Fund Manager, Public Safety Personnel Retirement System v. Department of Public Safety Local Retirement Bd. \(App. Div.1 1988\) 157 Ariz. 324, 757 P.2d 128.](#) [Municipal Corporations](#) 163; [Public Employment](#) 365

Local retirement board acted pursuant to subsection of this section when it granted disability benefits to injured police officer and when it later affirmed that decision upon administrative review and, therefore, board made those decisions in good faith, so that state retirement fund would have to indemnify board for all resulting liabilities, including trial court’s award of attorney fees and costs to state retirement fund. [Fund Manager, Public Safety Personnel Retirement System v. Department of Public Safety Local Retirement Bd. \(App. Div.1 1988\) 157 Ariz. 324, 757 P.2d 128.](#) [Municipal Corporations](#) 187(8.1); [Public Employment](#) 404

Transfer between systems

Since no hearing or proceeding had been instituted, transfer order of fund manager of public safety personnel retirement system, which moved University of Arizona security guards from its system to Arizona State Retirement System, was not a “decision” as to which University regents were required to comply with time and manner review requirements before filing for special action. [Arizona Bd. of Regents for and on Behalf of University of Arizona v. State ex rel. State of Ariz. Public Safety Retirement Fund Manager Adm’r \(App. Div.1 1989\) 160 Ariz. 150, 771 P.2d 880.](#) [Education](#) 1122(1); [Public Employment](#) 544

Res judicata

Manager of public safety personnel retirement system fund was not barred by doctrine of res judicata from seeking relief from order of disability of board of appeals granting accidental disability pension to applicant whose eligibility was in

question, since court which had dismissed earlier action for lack of jurisdiction did not decide issue of applicant's eligibility, but instead had found that fund manager had not exhausted his administrative remedies by asking local board for rehearing. [Fund Manager, Public Safety Personnel Retirement System v. Tucson Police Public Safety Personnel Retirement System Bd.](#) (App. Div.2 1983) 137 Ariz. 536, 672 P.2d 201 . Judgment 715(3)

Review

Powers of police public safety personnel retirement system board did not include power to set aside reasons for police officer's termination, but termination and reasons for termination could be attacked only by appeal to civil service commission. [Leschinsky v. Public Safety Personnel Retirement System](#) (App. Div.2 1976) 27 Ariz.App. 618, 557 P.2d 550 . [Municipal Corporations 185\(12\)](#); [Municipal Corporations 187\(1\)](#); [Public Employment 382](#); [Public Employment 539](#)

Context and Analysis (2)

Cross References (2)

Department of public safety, see [§ 41-1711 et seq.](#)

Universities and colleges, see [§ 15-1601 et seq.](#)

Validity

There are no Validity results for this citation.



AGENDA ITEM REVIEW FORM



PSPRS - Police

3.B.

Meeting Date: 07/03/2019

Submitted By: Kay Macuil, City Attorney, Attorney's Office

ITEM:

Discussion and possible action on any and all matters regarding designating a physician or physicians to a medical board and adopting that medical board. **(Edgardo Carbajal, Human Resources Coordinator)**.

SUMMARY:

The Board has the power to appoint a medical board (ARS 38-847(D))(9) authority is highlighted in the first attachment). The purpose of a medical board is to determine disability for benefits or determine pre-existing conditions or other disqualifying circumstances. (ARS 38-859 the second attachment explains the purpose of the medical board. ARS 38-844(D) list the disqualifying circumstances.)

ARS 8-859(B) explains that the physicians the board designates cannot be physicians regularly contracted by the City of San Luis when the physician is determining whether a member is disabled for purposes of receiving the plan benefit. However, for purposes of determining whether a pre-existing condition or other disqualifying circumstance exists, the physician may be regularly contracted by the city. Here is the wording of ARS 8-859(B):

"For the purpose of determining a disability, the medical board shall be composed of a designated physician or physicians working in a clinic other than the employer's regular employee or contractee. Employees employed after October 1, 1992 shall undergo a medical examination for the purpose of identifying a physical or mental condition or injury that existed or occurred prior to a member's date of membership in the system and for which benefits may otherwise be limited by [§ 38-844, subsection D](#), and for this purpose, the medical board shall be composed of a designated physician or physicians working in a clinic that may be the employer's regular employee or contractee."

Arizona Peace Officer Standard Training (AzPOST) requirement is that the physicians be AzPOST certified.

Staff recommends the AzPOST certified physicians of Pinnacle Health Care, Urgent Care Health Centers, Bruce Carter, M.D. and James Black, M.D.

RECOMMENDATION / SUGGESTED MOTION:

I MOVE TO DESIGNATE PHYSICIANS BRUCE CARTER, M.D. AND JAMES BLACK, M.D. AND RATIFY USING THEM FOR THE PRE-MEMBERSHIP EXAMS OF VICENTE TORRES, RAFAEL LIZARDE, AND JOSE PEREDA AND ADOPT THOSE PHYSICIANS AS THE MEDICAL BOARD.

Attachments

ARS 38-847 Local Boards

ARS 38-859 Medical Boards

[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. § 38-847

§ 38-847. Local boards

Effective: August 6, 2016

[Currentness](#)

A. The administration of the system and responsibility for making the provisions of the system effective for each employer are vested in a local board. The department of public safety, the Arizona game and fish department, the department of emergency and military affairs, the university of Arizona, Arizona state university, northern Arizona university, each county sheriff's office, each county attorney's office, each county parks department, each municipal fire department, each eligible fire district, each community college district, each municipal police department, the department of law, the department of liquor licenses and control, the Arizona department of agriculture, the Arizona state parks board, each Indian reservation police agency and each Indian reservation firefighting agency shall have a local board. A nonprofit corporation operating pursuant to §§ 28-8423 and 28-8424 shall have one local board for all of its members. Each local board shall be constituted as follows:

1. For political subdivisions or Indian tribes, the mayor or chief elected official or a designee of the mayor or chief elected official approved by the respective governing body as chairman, two members elected by secret ballot by members employed by the appropriate employer and two citizens, one of whom shall be the head of the merit system, or the head's designee from among the other members of the merit system, if it exists for the group of members, appointed by the mayor or chief elected official and with the approval of the governing body of the city or the governing body of the employer. The appointed two citizens shall serve on both local boards in a city or Indian tribes where both fire and police department employees are members.
2. For state agencies and nonprofit corporations operating pursuant to §§ 28-8423 and 28-8424, two members elected by secret ballot by the members employed by the appropriate employer and three citizens appointed by the governor. Each state agency local board shall elect a chairman.
3. For fire districts, the chairperson of the fire district governing board or the chairperson's designee, two members elected by secret ballot by members employed by the fire district and two citizens appointed by the chairperson of the fire district governing board, one of whom is a resident of the fire district and one of whom has experience in personnel administration but who is not required to be a resident of the fire district.
4. For joint powers authorities organized pursuant to § 48-805.01, the joint powers authority board chairman or a designee

approved by the governing body, two members elected by secret ballot by members employed by the joint powers authority and two citizens, one of whom is a resident of one of the partner entities and one of whom has experience in personnel administration but who is not required to be a resident of a partner entity.

B. On the taking effect of this system for an employer, the appointments and elections of local board members shall take place with one elective and appointive local board member serving a term ending two years after the effective date of participation for the employer and other local board members serving a term ending four years after the effective date. Thereafter, every second year, and as a vacancy occurs, an office shall be filled for a term of four years in the same manner as previously provided.

C. Each local board shall be fully constituted pursuant to subsection A of this section within sixty days after the employer's effective date of participation in the system. If the deadline is not met, on the written request of any member who is covered by the local board or the employer to the board of trustees, the board of trustees may appoint all vacancies of the local board pursuant to subsection A of this section and designate whether each appointive position is for a two year or four year term. If the board of trustees cannot find individuals to serve on the local board who meet the requirements of subsection A of this section, the board of trustees may appoint individuals to serve as interim local board members until qualified individuals are appointed or elected. Each local board shall meet at least twice a year. Each member of a local board, within ten days after the member's appointment or election, shall take an oath of office that, so far as it devolves on the member, the member shall diligently and honestly administer the affairs of the local board and that the member shall not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the system.

D. Except as limited by subsection E of this section, a local board shall have such powers as may be necessary to discharge the following duties:

1. To decide all questions of eligibility for membership, service credits and benefits and determine the amount, manner and time of payment of any benefits under the system.
2. To prescribe procedures to be followed by claimants in filing applications for benefits.
3. To make a determination as to the right of any claimant to a benefit and to afford any claimant or the board of trustees, or both, a right to a rehearing on the original determination. Except as otherwise required by law, unless all parties involved in a matter presented to the local board for determination otherwise agree, the local board shall commence a hearing on the matter within ninety days after the date the matter is presented to the local board for determination. If a local board fails to commence a hearing as provided in this paragraph, on a matter presented to the local board for determination, the relief demanded by the party petitioning the local board is deemed granted and approved by the local board. The granting and approval of this relief is considered final and binding unless a timely request for rehearing or appeal is made as provided in this article, unless the board of trustees determines that granting the relief requested would violate the internal revenue code¹ or threaten to impair the system's status as a qualified plan under the internal revenue code. If the board of trustees determines that granting the requested relief would violate the internal revenue code or threaten to impair the system's status as a qualified plan, the board of trustees may refuse to grant the relief by issuing a written determination to the local board and the party petitioning the local board for relief. The decision by the board of trustees is subject to judicial review pursuant to title 12, chapter 7, article 6.²

4. To request and receive from the employers and from members such information as is necessary for the proper administration of the system and action on claims for eligibility for membership and benefits, and to forward such information to the board of trustees.

5. To distribute, in such manner as the local board determines to be appropriate, information explaining the system received from the board of trustees.

6. To furnish the employer, the board of trustees and the legislature, on request, with such annual reports with respect to the administration of the system as are reasonable and appropriate.

7. To receive and review the actuarial valuation of the system for its group of members.

8. To receive and review reports of the financial condition and of the receipts and disbursements of the fund from the board of trustees.

9. To appoint medical boards as provided in § 38-859.

10. To sue and be sued to effectuate the duties and responsibilities set forth in this article.

E. A local board shall have no power to add to, subtract from, modify or waive any of the terms of the system, change or add to any benefits provided by the system or waive or fail to apply any requirement of eligibility for membership or benefits under the system. Notwithstanding any limitations periods imposed in this article, including subsection D, paragraph 3 and subsections G and H of this section, if the board of trustees determines a local board decision violates the internal revenue code or threatens to impair the system's status as a qualified plan under the internal revenue code, the local board's decision is not final and binding and the board of trustees may refrain from implementing or complying with the local board decision.

F. A local board, from time to time, shall establish and adopt such rules as it deems necessary or desirable for its administration. All rules and decisions of a local board shall be uniformly and consistently applied to all members in similar circumstances. If a claim or dispute is presented to a local board for determination but the local board has not yet adopted uniform rules of procedure for adjudication of the claim or dispute, the local board shall adopt and use the model uniform rules of local board procedure that are issued by the board of trustees' fiduciary counsel to adjudicate the claim or dispute.

G. Except as otherwise provided in this article, any action by a majority vote of the members of a local board that is not inconsistent with the provisions of the system and the internal revenue code shall be final, conclusive and binding on all persons affected by it unless a timely application for a rehearing or appeal is filed as provided in this article. No later than twenty days after taking action, the local board shall submit to the board of trustees the minutes from the local board meeting that include the name of the member affected by its decision, a description of the action taken and an explanation of the reasons and all documents submitted to the local board for the action taken, including the reports of a medical board. The

board of trustees may not implement and comply with any local board action that does not comply with the internal revenue code or that threatens to jeopardize the system's status as a qualified plan under the internal revenue code.

H. A claimant or the board of trustees may apply for a rehearing before the local board within the time periods prescribed in this subsection, except that if a decision of a local board violates the internal revenue code or threatens to jeopardize the system's status as a qualified plan under the internal revenue code, no limitation period for the board of trustees to seek a rehearing of a local board decision applies. An application for a rehearing shall be filed in writing with a member of the local board or its secretary within sixty days after:

1. The applicant-claimant receives notification of the local board's original action by certified mail, by attending the meeting at which the action is taken or by receiving benefits from the system pursuant to the local board's original action, whichever occurs first.

2. The applicant-board of trustees receives notification of the local board's original action as prescribed by subsection G of this section by certified mail.

I. A hearing before a local board on a matter remanded from the superior court is not subject to a rehearing before the local board.

J. Decisions of local boards are subject to judicial review pursuant to title 12, chapter 7, article 6.

K. When making a ruling, determination or calculation, the local board shall be entitled to rely on information furnished by the employer, a medical board, the board of trustees, independent legal counsel or the actuary for the system.

L. Each member of a local board is entitled to one vote. A majority is necessary for a decision by the members of a local board at any meeting of the local board.

M. The local board shall adopt such bylaws as it deems desirable. The local board shall elect a secretary who may, but need not, be a member of the local board. The secretary of the local board shall keep a record and prepare minutes of all meetings in compliance with chapter 3, article 3.1 of this title³ and forward the minutes and all necessary communications to the board of trustees as prescribed by subsection G of this section.

N. The fees of the medical board and of the local board's independent legal counsel and all other expenses of the local board necessary for the administration of the system shall be paid by the employer and not the board of trustees or system at such rates and in such amounts as the local board shall approve. Legal counsel that is employed by the local board is independent of the employer and any employee organization or member and owes its duty of loyalty only to the local board in connection with its representation of the local board.

O. The local board shall issue directions to the board of trustees concerning all benefits that are to be paid from the employer's account pursuant to the provisions of the fund. The local board shall keep on file, in such manner as it may deem convenient or proper, all reports from the board of trustees and the actuary.

P. The local board and the individual members of the local board shall be indemnified from the assets of the employer for any judgment against the local board or its members, including attorney fees and costs, arising from any act, or failure to act, made in good faith pursuant to the provisions of the system, including expenses reasonably incurred in the defense of any claim relating to the act or failure to act.

Credits

Added by Laws 1968, Ch. 85, § 1. Amended by Laws 1970, Ch. 211, § 9; Laws 1972, Ch. 163, § 40; Laws 1980, Ch. 146, § 5; Laws 1982, Ch. 4, § 1; Laws 1982, Ch. 111, § 1; Laws 1983, Ch. 300, § 12; Laws 1986, Ch. 88, § 2; Laws 1988, Ch. 19, § 4, eff. March 31, 1988; Laws 1989, Ch. 197, § 2; Laws 1990, Ch. 411, § 3; Laws 1992, Ch. 340, § 1; Laws 1992, Ch. 341, § 3; Laws 1994, Ch. 130, § 2; Laws 1995, Ch. 205, § 6; Laws 1997, Ch. 1, § 427, eff. Oct. 1, 1997; Laws 1997, Ch. 239, § 13; Laws 1999, Ch. 327, § 24; Laws 2000, Ch. 329, § 2; Laws 2001, Ch. 353, § 3; Laws 2008, Ch. 59, § 1; Laws 2010, Ch. 118, § 7; Laws 2010, Ch. 200, § 41, eff. April 28, 2010; Laws 2011, Ch. 27, § 26; Laws 2011, Ch. 347, § 4; Laws 2012, Ch. 136, § 7; Laws 2013, Ch. 203, § 7; Laws 2013, Ch. 216, § 5; Laws 2016, Ch. 323, § 2.

Footnotes

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

² Section 12-901 et seq.

³ Section 38-431 et seq.

A. R. S. § 38-847, AZ ST § 38-847

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 (14)

Local boards

Local boards - In general

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.

Local boards - Reemployment

Fund manager of public safety personnel retirement system must immediately inform local board under which benefits originated of any benefit payments which the fund manager thinks are being improperly continued during the reemployment of a retired member, such notification will afford local board the opportunity to correct the matter, and fund manager could then proceed to recover any wrongfully paid benefits. Op.Atty.Gen. No. 177-237, [1977 WL 22161](#).

Reemployment, local boards

Fund manager of public safety personnel retirement system must immediately inform local board under which benefits originated of any benefit payments which the fund manager thinks are being improperly continued during the reemployment of a retired member, such notification will afford local board the opportunity to correct the matter, and fund manager could then proceed to recover any wrongfully paid benefits. Op.Atty.Gen. No. 177-237, [1977 WL 22161](#).

Department of public safety board

The governor is authorized to appoint three members to the department of public safety board at his discretion. Op.Atty.Gen. No. 180-78, [1980 WL 88476](#).

Eligibility

Drug control district special agents who joined the public safety personnel retirement system prior to August 27, 1977 were entitled to participate in the system, but whether post-August 27, 1977 district employee should continue in the system was a question left to the local board's judgment. Op.Atty.Gen. No. 180-191, [1980 WL 28072](#).

Arizona drug control district special agents who joined the public safety personnel retirement system between 1975 and 1977 would be entitled to participate in the system, and the appropriate local retirement board would have authority to determine whether district employees who joined the system between 1977 and 1980 were eligible to participate in the system or should have been covered under the state retirement plan, but district employees hired after July 31, 1980, would not be entitled to participate in the system. Op.Atty.Gen. No. 180-191, [1980 WL 28072](#).

Election of benefits

Public employer who, prior to his retirement, has worked under several systems, including public safety personnel

retirement system, has right to elect benefits under one specific system under which he has worked, and all his benefits and his widow's benefits would then be computed under the specific system elected. Op.Atty.Gen. No. 69-8.

Disability board of appeals

Public safety personnel retirement system disability board of appeals did not have jurisdiction under § 38-847.01 (repealed, see, now, this section) to hear questions of whether or not employee was eligible for benefits; all disability board was empowered to decide was whether local board was correct in determining that applicant for benefits was or was not disabled under law, and if so, nature, extent, cause, and type of disability. [Fund Manager, Public Safety Personnel Retirement System v. Tucson Police Public Safety Personnel Retirement System Bd. \(App. Div.2 1983\) 137 Ariz. 536, 672 P.2d 201.](#) [Public Employment 483](#)

Membership

Local police board had no power to find that employee who had withdrawn his contributions from public safety personnel retirement system could still be member entitled to benefits under system, in that local board had no power to modify or extend statutory system. [Fund Manager, Public Safety Personnel Retirement System v. Tucson Police and Fire Public Safety Personnel Retirement Systems Bd. \(App. Div.2 1985\) 147 Ariz. 1, 708 P.2d 92.](#) [Municipal Corporations 187\(4\); Public Employment 393](#)

A retired employee of the Game and Fish Department is not a member of the Public Safety Personnel Retirement System and, therefore, is not eligible to seek election to the Local Public Safety Retirement Board. Op.Atty.Gen. No. 188-099, [1988 WL 249674.](#)

Indemnification

Use of words "in good faith pursuant to the provisions of the system" in subsection of this section providing for indemnification of local retirement boards by state retirement fund expressly establishes indemnification for honest mistakes in performance of adjudicative and administrative responsibilities. [Fund Manager, Public Safety Personnel Retirement System v. Department of Public Safety Local Retirement Bd. \(App. Div.1 1988\) 157 Ariz. 324, 757 P.2d 128.](#) [Municipal Corporations 163; Public Employment 365](#)

Local retirement board acted pursuant to subsection of this section when it granted disability benefits to injured police officer and when it later affirmed that decision upon administrative review and, therefore, board made those decisions in good faith, so that state retirement fund would have to indemnify board for all resulting liabilities, including trial court's award of attorney fees and costs to state retirement fund. [Fund Manager, Public Safety Personnel Retirement System v. Department of Public Safety Local Retirement Bd. \(App. Div.1 1988\) 157 Ariz. 324, 757 P.2d 128.](#) [Municipal Corporations 187\(8.1\); Public Employment 404](#)

Transfer between systems

Since no hearing or proceeding had been instituted, transfer order of fund manager of public safety personnel retirement system, which moved University of Arizona security guards from its system to Arizona State Retirement System, was not a "decision" as to which University regents were required to comply with time and manner review requirements before filing for special action. [Arizona Bd. of Regents for and on Behalf of University of Arizona v. State ex rel. State of Ariz. Public Safety Retirement Fund Manager Adm'r \(App. Div.1 1989\) 160 Ariz. 150, 771 P.2d 880.](#) [Education 1122\(1\); Public Employment 544](#)

Res judicata

Manager of public safety personnel retirement system fund was not barred by doctrine of res judicata from seeking relief from order of disability of board of appeals granting accidental disability pension to applicant whose eligibility was in question, since court which had dismissed earlier action for lack of jurisdiction did not decide issue of applicant's eligibility, but instead had found that fund manager had not exhausted his administrative remedies by asking local board for rehearing. [Fund Manager, Public Safety Personnel Retirement System v. Tucson Police Public Safety Personnel Retirement System Bd.](#) (App. Div.2 1983) 137 Ariz. 536, 672 P.2d 201. Judgment 715(3)

Review

Powers of police public safety personnel retirement system board did not include power to set aside reasons for police officer's termination, but termination and reasons for termination could be attacked only by appeal to civil service commission. [Leschinsky v. Public Safety Personnel Retirement System](#) (App. Div.2 1976) 27 Ariz.App. 618, 557 P.2d 550. [Municipal Corporations 185\(12\)](#); [Municipal Corporations 187\(1\)](#); [Public Employment 382](#); [Public Employment 539](#)

Context and Analysis (2)

Cross References (2)

Department of public safety, see [§ 41-1711 et seq.](#)

Universities and colleges, see [§ 15-1601 et seq.](#)

Validity

There are no Validity results for this citation.

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. § 38-859

§ 38-859. Medical boards; purposes; composition; medical examinations

Effective: September 13, 2013

Currentness

A. The purposes of a medical board are to:

1. Identify a physical or mental condition or injury that existed or occurred prior to the member's date of membership in the system and for which benefits may otherwise be limited by § 38-844, subsection D.
2. Evaluate a member's eligibility for an accidental disability pension.
3. Evaluate a member's eligibility for an ordinary disability pension.
4. Evaluate a member's eligibility for a temporary disability pension.
5. Evaluate a member's eligibility for a catastrophic disability pension.
6. For the purposes of § 38-846, determine through appropriate medical evidence the proximate cause of death for members who are killed in the line of duty if the death occurs more than one year after the date of injury.

B. For the purpose of determining a disability, the medical board shall be composed of a designated physician or physicians working in a clinic other than the employer's regular employee or contractee. Employees employed after October 1, 1992 shall undergo a medical examination for the purpose of identifying a physical or mental condition or injury that existed or occurred prior to a member's date of membership in the system and for which benefits may otherwise be limited by § 38-844, subsection D, and for this purpose, the medical board shall be composed of a designated physician or physicians working in a clinic that may be the employer's regular employee or contractee.

C. A finding of accidental, ordinary, temporary or catastrophic disability shall be based on medical evidence by a designated physician or a physician working in a clinic that is appointed by the local board pursuant to § 38-847, subsection D, paragraph 9 that established the disability. The local board shall resolve material conflicts in medical evidence. If required, the local board may employ other physicians or clinics to report on special cases. With the approval of the local board, a designated physician or physicians working in a clinic that is employed by the local board may employ occupational specialists to assist the designated physician or physicians working in a clinic in rendering an opinion.

D. All employees shall undergo medical examinations before a designated physician or a physician working in a clinic that is appointed by the local board pursuant to and for the reasons prescribed in this article. An employee who fails to comply with this subsection waives all rights to disability benefits under this article.

E. The examining physician or clinic shall report the results of examinations to the local board, and the secretary of the local board shall preserve the report as a permanent record. Medical examinations conducted pursuant to this article shall be conducted by a physician and shall not be conducted or utilized for the purposes of hiring, advancement, discharge, job training or other terms, conditions and privileges of employment unrelated to the receipt of or qualification for pension benefits or service credits under the system.

F. This section does not affect or impair the right of an employer to prescribe medical or physical standards for employees or prospective employees.

Credits

Added by [Laws 1992, Ch. 340, § 2](#). Amended by [Laws 2004, Ch. 325, § 7](#); [Laws 2012, Ch. 136, § 11](#); [Laws 2013, Ch. 203, § 12](#).

A. R. S. § 38-859, AZ ST § 38-859

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 (1)

Construction and application

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

Validity

There are no Validity results for this citation.

Context & Analysis

There are no Context & Analysis results for this citation.

Editor's and Revisor's Notes

There are no Editor's and Revisor's Notes for this citation.

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.



AGENDA ITEM REVIEW FORM



PSPRS - Police

3.C.

Meeting Date: 07/03/2019

Submitted By: Michelle Boucher, Administrative Coordinator, Police Department

ITEM:

Discussion and possible action on any and all matters regarding new membership applications, Police Officer Rafael Lizarde, effective date January 14, 2019, Police Officer Jose Pereda, effective date April 14, 2019, and Police Officer Vicente Torres effective date January 14, 2019. **(Edgardo Carbajal, Human Resources Coordinator)**

SUMMARY:

Under ARS § 38-847.01 (attached), for the board to determine the eligibility of new membership applications, the City of San Luis must provide to this board:

1. the date the employee was hired or appointed to the position,
2. the employee's position title,
3. the description of the essential functions for the position.

HR staff provided this board hire dates as shown in the above Agenda Item, and that all of the applicants are Police Officers and that the essential functions for the position are:

PHYSICAL AND MENTAL DEMANDS:

The physical and mental demands described here are representative of those that must be met by employees to successfully perform the essential functions of this class. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Physical Demands

While performing the duties of this job, the employee is frequently required to sit and stand; walk long distances; drive a vehicle; talk and hear, both in person and by radio; use hands to finger, handle, feel or operate equipment; engage in repetitive movements of hands and wrists; reach with hands and arms; stoop, bend, kneel and crouch and occasionally lift or move up to twenty-five pounds.

Specific vision abilities required by this job include close vision, distance vision, color vision, the use of both eyes, depth perception, peripheral vision and the ability to adjust focus.

Mental Demands

While performing the duties of this job, the employee is frequently required to sit and stand; walk long distances; drive a vehicle; talk and hear, both in person and by radio; use hands to finger, handle, feel or operate equipment; engage in repetitive movements of hands and wrists; reach with hands and arms; stoop, bend, kneel and crouch and occasionally lift or move up to twenty-five pounds.

Specific vision abilities required by this job include close vision, distance vision, color vision, the use of both eyes, depth perception, peripheral vision and the ability to adjust focus.

Work Environment:

Work is performed in a standard office environment, and in the field on tactical assignments; may be exposed to physical attacks, hazardous chemicals, infectious and communicable diseases; may be required to physically restrain persons; must maintain a level of physical fitness to meet department standards.

This job is classified as Safety Sensitive, and subject to Federal and state regulations

The applicants have met the definitions of Member and Eligible Group under ARS § 38-842 which includes that they:

- (1) be full-time employees at least 40 hours per week,
- (2) be paid municipal police officers who are regularly assigned to hazardous duty,
- (3) be certified peace officers and
- (4) be hired for more than six months in a calendar year.

As a requirement for membership, the City of San Luis and this board must ensure that employees who qualify for membership into PSPRS undergo a medical evaluation. This evaluation is completed to identify any physical or mental conditions that exist that may potentially affect the employee's future eligibility for disability benefits. (See ARS § 38-844(D) and ARS §38-859(B), attached). These evaluations are strictly conducted for the purposes related to the PSPRS plan benefits and are not used in employment-related decisions such as hiring, promotion, termination, etc. The medical evaluations for these applicants followed the PSPRS Revised Model Uniform Rules of Local Board Procedure and the relevant Arizona Revised Statutes. HR received the required medical evaluations and no pre-existing conditions indicated.

The City of San Luis HR Department finds that Rafael Lizarde, Jose Pereda, and Vicente Torres have met the eligibility requirements, satisfactorily completed the PSPRS Membership Form, with no pre-existing conditions.

RECOMMENDATION / SUGGESTED MOTION:

**AS TO APPLICANTS RAFAEL LIZARDE, JOSE PEREDA, AND VICENTE TORRES,
I MOVE TO**

ACCEPT THE HR DEPARTMENT'S FINDINGS OF ELIGIBILITY WITH NO PRE-EXISTING CONDITIONS

AND

ACCEPT THEM FOR MEMBERSHIP TO PARTICIPATE IN THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM PLAN.

Attachments

ARS 38-847 Eligibility

ARS 38-842 Definitions

ARS 38-844(D) Disability Benefits

A\$S 38-959(B) Medical Exam Requirement

[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. § 38-847.01

§ 38-847.01. Membership in retirement plan; eligibility

Effective: September 13, 2013

[Currentness](#)

A. Each employee of an eligible group shall participate in the plan on proper determination of eligibility for membership by the local board pursuant to [§ 38-847, subsection D](#).

B. The employer shall provide to the local board all necessary information to render a decision on the employee's eligibility for membership. The information shall include:

1. The date the employee was hired or appointed to the position.
2. The employee's position title.
3. A description of the essential functions for the position.

C. An employee receiving a pension from the plan is not subject to this section, but is subject to [§ 38-849](#).

Credits

Added by [Laws 2013, Ch. 216, § 6](#).

A. R. S. § 38-847.01, AZ ST § 38-847.01

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

End of Document

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Editor's and Revisor's Notes (2)

HISTORICAL AND STATUTORY NOTES

See, now, § 38-847.

Former 38-847.01, added by Laws 1980, Ch. 146, § 6, which related to appeals from decisions or rulings of local boards on disability matters and established a disability board of appeals, was repealed by Laws 1983, Ch. 300, § 13.

Validity

There are no Validity results for this citation.

Bill Drafts

There are no Bill Drafts for this citation.

Notes of Decisions

There are no Notes of Decisions for this citation.



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

[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. § 38-842

§ 38-842. Definitions

Effective: August 9, 2017

[Currentness](#)

In this article, unless the context otherwise requires:

1. “Accidental disability” means a physical or mental condition that the local board finds totally and permanently prevents an employee from performing a reasonable range of duties within the employee’s job classification and that was incurred in the performance of the employee’s duty.
2. “Accumulated contributions” means, for each member, the sum of the amount of the member’s aggregate contributions made to the fund and the amount, if any, attributable to the employee’s contributions before the member’s effective date under another public retirement system, other than the federal social security act, and transferred to the fund minus the benefits paid to or on behalf of the member.
3. “Actuarial equivalent” means equality in present value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest assumptions adopted by the board.
4. “Alternate payee” means the spouse or former spouse of a participant as designated in a domestic relations order.
5. “Alternate payee’s portion” means benefits that are payable to an alternate payee pursuant to a plan approved domestic relations order.
6. “Annuitant” means a person who is receiving a benefit pursuant to [§ 38-846.01](#).

7. “Average monthly benefit compensation” means the result obtained by dividing the total compensation paid to an employee during a considered period by the number of months, including fractional months, in which such compensation was received. For an employee who becomes a member of the system:

(a) Before January 1, 2012, the considered period shall be the three consecutive years within the last twenty completed years of credited service that yield the highest average.

(b) On or after January 1, 2012 and before July 1, 2017, the considered period is the five consecutive years within the last twenty completed years of credited service that yield the highest average. In the computation under this paragraph, a period of nonpaid or partially paid industrial leave shall be considered based on the compensation the employee would have received in the employee’s job classification if the employee was not on industrial leave.

(c) On or after July 1, 2017, the considered period is the five consecutive years within the last fifteen completed years of credited service that yield the highest average. In the computation under this paragraph, a period of nonpaid or partially paid industrial leave shall be considered based on the compensation the employee would have received in the employee’s job classification if the employee was not on industrial leave.

8. “Board” means the board of trustees of the system, who are the persons appointed to invest and operate the fund.

9. “Catastrophic disability” means a physical and not a psychological condition that the local board determines prevents the employee from totally and permanently engaging in any gainful employment and that results from a physical injury incurred in the performance of the employee’s duty.

10. “Certified peace officer” means a peace officer certified by the Arizona peace officer standards and training board.

11. “Claimant” means any member or beneficiary who files an application for benefits pursuant to this article.

12. “Compensation” means, for the purpose of computing retirement benefits, base salary, overtime pay, shift differential pay, military differential wage pay, compensatory time used by an employee in lieu of overtime not otherwise paid by an employer and holiday pay paid to an employee by the employer for the employee’s performance of services in an eligible group on a regular monthly, semimonthly or biweekly payroll basis and longevity pay paid to an employee at least every six months for which contributions are made to the system pursuant to § 38-843, subsection D. Compensation does not include, for the purpose of computing retirement benefits, payment for unused sick leave, payment in lieu of vacation, payment for unused compensatory time or payment for any fringe benefits. In addition, compensation does not include, for the purpose of computing retirement benefits, payments made directly or indirectly by the employer to the employee for work performed for a third party on a contracted basis or any other type of agreement under which the third party pays or reimburses the employer for the work performed by the employee for that third party, except for third party contracts between public agencies for law enforcement, criminal, traffic and crime suppression activities training or fire, wildfire, emergency medical or emergency management activities or where the employer supervises the employee’s performance of law enforcement, criminal, traffic and crime suppression activities training or fire, wildfire, emergency medical or emergency management

activities. For the purposes of this paragraph, “base salary” means the amount of compensation each employee is regularly paid for personal services rendered to an employer before the addition of any extra monies, including overtime pay, shift differential pay, holiday pay, longevity pay, fringe benefit pay and similar extra payments.

13. “Credited service” means the member’s total period of service before the member’s effective date of participation, plus those compensated periods of the member’s service thereafter for which the member made contributions to the fund.

14. “Cure period” means the ninety-day period in which a participant or alternate payee may submit an amended domestic relations order and request a determination, calculated from the time the system issues a determination finding that a previously submitted domestic relations order did not qualify as a plan approved domestic relations order.

15. “Depository” means a bank in which all monies of the system are deposited and held and from which all expenditures for benefits, expenses and investments are disbursed.

16. “Determination” means a written document that indicates to a participant and alternate payee whether a domestic relations order qualifies as a plan approved domestic relations order.

17. “Determination period” means the ninety-day period in which the system must review a domestic relations order that is submitted by a participant or alternate payee to determine whether the domestic relations order qualifies as a plan approved domestic relations order, calculated from the time the system mails a notice of receipt to the participant and alternate payee.

18. “Direct rollover” means a payment by the system to an eligible retirement plan that is specified by the distributee.

19. “Distributee” means a member, a member’s surviving spouse or a member’s spouse or former spouse who is the alternate payee under a plan approved domestic relations order.

20. “Domestic relations order” means an order of a court of this state that is made pursuant to the domestic relations laws of this state and that creates or recognizes the existence of an alternate payee’s right to, or assigns to an alternate payee the right to, receive a portion of the benefits payable to a participant.

21. “Effective date of participation” means July 1, 1968, except with respect to employers and their covered employees whose contributions to the fund commence thereafter, the effective date of their participation in the system is as specified in the applicable joinder agreement.

22. “Effective date of vesting” means the date a member’s rights to benefits vest pursuant to [§ 38-844.01](#).

23. “Eligible child” means an unmarried child of a deceased member or retired member who meets one of the following qualifications:

(a) Is under eighteen years of age.

(b) Is at least eighteen years of age and under twenty-three years of age only during any period that the child is a full-time student.

(c) Is under a disability that began before the child attained twenty-three years of age and remains a dependent of the surviving spouse or guardian.

24. “Eligible groups” means only the following who are regularly assigned to hazardous duty:

(a) Municipal police officers who are certified peace officers.

(b) Municipal firefighters.

(c) Paid full-time firefighters employed directly by a fire district organized pursuant to § 48-803 or 48-804 or a joint powers authority pursuant to § 48-805.01 with three or more full-time firefighters, but not including firefighters employed by a fire district pursuant to a contract with a corporation.

(d) State highway patrol officers who are certified peace officers.

(e) State firefighters.

(f) County sheriffs and deputies who are certified peace officers.

(g) Game and fish wardens who are certified peace officers.

(h) Police officers who are certified peace officers and firefighters of a nonprofit corporation operating a public airport

pursuant to §§ 28-8423 and 28-8424. A police officer shall be designated pursuant to § 28-8426 to aid and supplement state and local law enforcement agencies and a firefighter's sole duty shall be to perform firefighting services, including services required by federal regulations.

- (i) Police officers who are certified peace officers and who are appointed by the Arizona board of regents.
- (j) Police officers who are certified peace officers and who are appointed by a community college district governing board.
- (k) State attorney general investigators who are certified peace officers.
- (l) County attorney investigators who are certified peace officers.
- (m) Police officers who are certified peace officers and who are employed by an Indian reservation police agency.
- (n) Firefighters who are employed by an Indian reservation firefighting agency.
- (o) Department of liquor licenses and control investigators who are certified peace officers.
- (p) Arizona department of agriculture officers who are certified peace officers.
- (q) Arizona state parks board rangers and managers who are certified peace officers.
- (r) County park rangers who are certified peace officers.

25. "Eligible retirement plan" means any of the following that accepts a distributee's eligible rollover distribution:

- (a) An individual retirement account described in [section 408\(a\) of the internal revenue code](#).¹
- (b) An individual retirement annuity described in [section 408\(b\) of the internal revenue code](#).

- (c) An annuity plan described in [section 403\(a\) of the internal revenue code](#).
 - (d) A qualified trust described in [section 401\(a\) of the internal revenue code](#).
 - (e) An annuity contract described in [section 403\(b\) of the internal revenue code](#).
 - (f) An eligible deferred compensation plan described in [section 457\(b\) of the internal revenue code](#) that is maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state and that agrees to separately account for amounts transferred into the eligible deferred compensation plan from this plan.
26. “Eligible rollover distribution” means a payment to a distributee, but does not include any of the following:
- (a) Any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the member or the joint lives or joint life expectancies of the member and the member’s beneficiary or for a specified period of ten years or more.
 - (b) Any distribution to the extent the distribution is required under [section 401\(a\)\(9\) of the internal revenue code](#).
 - (c) The portion of any distribution that is not includable in gross income.
 - (d) Any distribution made to satisfy the requirements of [section 415 of the internal revenue code](#).
 - (e) Hardship distributions.
 - (f) Similar items designated by the commissioner of the United States internal revenue service in revenue rulings, notices and other guidance published in the internal revenue bulletin.
27. “Employee” means any person who is employed by a participating employer and who is a member of an eligible group but does not include any persons compensated on a contractual or fee basis. If an eligible group requires certified peace officer status or firefighter certification and at the option of the local board, employee may include a person who is training to become a certified peace officer or firefighter.

28. “Employers” means:

(a) Cities contributing to the fire fighters’ relief and pension fund as provided in §§ 9-951 through 9-971 or statutes amended thereby and antecedent thereto, as of June 30, 1968 on behalf of their full-time paid firefighters.

(b) Cities contributing under the state police pension laws as provided in §§ 9-911 through 9-934 or statutes amended thereby and antecedent thereto, as of June 30, 1968 on behalf of their municipal policemen.

(c) The state highway patrol covered under the state highway patrol retirement system.

(d) The state, or any political subdivision of this state, including towns, cities, fire districts, joint powers authorities, counties and nonprofit corporations operating public airports pursuant to §§ 28-8423 and 28-8424, that has elected to participate in the system on behalf of an eligible group of public safety personnel pursuant to a joinder agreement entered into after July 1, 1968.

(e) Indian tribes that have elected to participate in the system on behalf of an eligible group of public safety personnel pursuant to a joinder agreement entered into after July 1, 1968.

29. “Fund” means the public safety personnel retirement fund, which is the fund established to receive and invest contributions accumulated under the system and from which benefits are paid.

30. “Local board” means the retirement board of the employer, who are the persons appointed to administer the system as it applies to their members in the system.

31. “Member”:

(a) Means any full-time employee who meets all of the following qualifications:

(i) Who is either a paid municipal police officer, a paid firefighter, a law enforcement officer who is employed by this state including the director thereof, a state firefighter who is primarily assigned to firefighting duties, a firefighter or police officer of a nonprofit corporation operating a public airport pursuant to §§ 28-8423 and 28-8424, all ranks designated by the Arizona law enforcement merit system council, a state attorney general investigator who is a certified peace officer, a county attorney investigator who is a certified peace officer, a department of liquor licenses and control investigator who is a certified peace officer, an Arizona department of agriculture officer who is a certified peace officer, an Arizona state parks board ranger or manager who is a certified peace officer, a county park ranger who is a certified peace officer, a person who is a certified peace officer and who is employed by an Indian reservation police agency, a firefighter who is employed by an Indian

reservation firefighting agency or an employee included in a group designated as eligible employees under a joinder agreement entered into by their employer after July 1, 1968 and who is or was regularly assigned to hazardous duty or, beginning retroactively to January 1, 2009, who is a police chief or a fire chief.

(ii) Who, on or after the employee's effective date of participation, is receiving compensation for personal services rendered to an employer or would be receiving compensation except for an authorized leave of absence.

(iii) Whose customary employment is at least forty hours per week or, for those employees who customarily work fluctuating workweeks, whose customary employment averages at least forty hours per week.

(iv) Who is engaged to work for more than six months in a calendar year.

(v) Who, if economic conditions exist, is required to take furlough days or reduce the hours of the employee's normal workweek below forty hours but not less than thirty hours per pay cycle, and maintain the employee's active member status within the system as long as the hour change does not extend beyond twelve consecutive months.

(vi) Who has not attained age sixty-five before the employee's effective date of participation or who was over age sixty-five with twenty-five years or more of service prior to the employee's effective date of participation.

(b) Does not include an employee who is hired on or after July 1, 2017, who makes the irrevocable election to participate solely in the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter² and who was not an active, an inactive or a retired member of the system or a member of the system with a disability on June 30, 2017.

32. "Normal retirement date" means:

(a) For an employee who becomes a member of the system before January 1, 2012, the first day of the calendar month immediately following the employee's completion of twenty years of service or the employee's sixty-second birthday and the employee's completion of fifteen years of service.

(b) For an employee who becomes a member of the system on or after January 1, 2012 and before July 1, 2017, the first day of the calendar month immediately following the employee's completion of either twenty-five years of service or fifteen years of credited service if the employee is at least fifty-two and one-half years of age.

(c) For an employee who becomes a member of the system on or after July 1, 2017, the first day of the calendar month immediately following the employee's completion of fifteen years of credited service if the employee is at least fifty-five

years of age.

33. “Notice of receipt” means a written document that is issued by the system to a participant and alternate payee and that states that the system has received a domestic relations order and a request for a determination that the domestic relations order is a plan approved domestic relations order.

34. “Ordinary disability” means a physical condition that the local board determines will prevent an employee totally and permanently from performing a reasonable range of duties within the employee’s department or a mental condition that the local board determines will prevent an employee totally and permanently from engaging in any substantial gainful activity.

35. “Participant” means a member who is subject to a domestic relations order.

36. “Participant’s portion” means benefits that are payable to a participant pursuant to a plan approved domestic relations order.

37. “Pension” means a series of monthly amounts that are payable to a person who is entitled to receive benefits under the plan but does not include an annuity that is payable pursuant to [§ 38-846.01](#).

38. “Personal representative” means the personal representative of a deceased alternate payee.

39. “Physician” means a physician who is licensed pursuant to title 32, chapter 13 or 17.³

40. “Plan approved domestic relations order” means a domestic relations order that the system approves as meeting all the requirements for a plan approved domestic relations order as otherwise prescribed in this article.

41. “Plan year” or “fiscal year” means the period beginning on July 1 of any year and ending on June 30 of the next succeeding year.

42. “Regularly assigned to hazardous duty” means regularly assigned to duties of the type normally expected of municipal police officers, municipal or state firefighters, eligible fire district firefighters, state highway patrol officers, county sheriffs and deputies, fish and game wardens, firefighters and police officers of a nonprofit corporation operating a public airport pursuant to [§§ 28-8423](#) and [28-8424](#), police officers who are appointed by the Arizona board of regents or a community college district governing board, state attorney general investigators who are certified peace officers, county attorney investigators who are certified peace officers, department of liquor licenses and control investigators who are certified peace officers, Arizona department of agriculture officers who are certified peace officers, Arizona state parks board rangers and managers who are certified peace officers, county park rangers who are certified peace officers, police officers who are certified peace officers and who are employed by an Indian reservation police agency or firefighters who are employed by an

Indian reservation firefighting agency. Those individuals who are assigned solely to support duties such as secretaries, stenographers, clerical personnel, clerks, cooks, maintenance personnel, mechanics and dispatchers are not assigned to hazardous duty regardless of their position classification title. Since the normal duties of those jobs described in this paragraph are constantly changing, questions as to whether a person is or was previously regularly assigned to hazardous duty shall be resolved by the local board on a case-by-case basis. Resolutions by local boards are subject to rehearing and appeal.

43. “Retirement” or “retired” means termination of employment after a member has fulfilled all requirements for a pension, for an employee who becomes a member of the system on or after January 1, 2012 and before July 1, 2017, attains the age and service requirements for a normal retirement date or for an employee who becomes a member of the system on or after July 1, 2017 attains the age and credited service requirements for a normal retirement date. Retirement shall be considered as commencing on the first day of the month immediately following a member’s last day of employment or authorized leave of absence, if later.

44. “Segregated funds” means the amount of benefits that would currently be payable to an alternate payee pursuant to a domestic relations order under review by the system, or a domestic relations order submitted to the system that failed to qualify as a plan approved domestic relations order, if the domestic relations order were determined to be a plan approved domestic relations order.

45. “Service” means the last period of continuous employment of an employee by the employers before the employee’s retirement, except that if such period includes employment during which the employee would not have qualified as a member had the system then been effective, such as employment as a volunteer firefighter, then only twenty-five percent of such noncovered employment shall be considered as service. Any absence that is authorized by an employer shall not be considered as interrupting continuity of employment if the employee returns within the period of authorized absence. Transfers between employers also shall not be considered as interrupting continuity of employment. Any period during which a member is receiving sick leave payments or a temporary disability pension shall be considered as service. Notwithstanding any other provision of this paragraph, any period during which a person was employed as a full-time paid firefighter for a corporation that contracted with an employer to provide firefighting services on behalf of the employer shall be considered a service if the employer has elected at its option to treat part or all of the period the firefighter worked for the company as a service in its applicable joinder agreement. Any reference in this system to the number of years of service of an employee shall be deemed to include fractional portions of a year.

46. “State” means the state of Arizona, including any department, office, board, commission, agency or other instrumentality of the state.

47. “System” means the public safety personnel retirement system established by this article.

48. “Temporary disability” means a physical or mental condition that the local board finds totally and temporarily prevents an employee from performing a reasonable range of duties within the employee’s department and that was incurred in the performance of the employee’s duty.

Credits

Added by Laws 1968, Ch. 85, § 1. Amended by Laws 1971, Ch. 74, § 2; Laws 1971, Ch. 143, § 1, eff. July 1, 1972; Laws 1971, Ch. 174, § 3; Laws 1972, Ch. 135, § 1; Laws 1973, Ch. 97, § 3; Laws 1974, Ch. 170, § 2; Laws 1977, Ch. 60, § 1; Laws 1977, Ch. 86, § 1; Laws 1980, Ch. 146, § 1; Laws 1982, Ch. 266, § 1; Laws 1983, Ch. 300, § 4; Laws 1986, Ch. 88, § 1; Laws 1988, Ch. 19, § 3, eff. March 31, 1988; Laws 1988, Ch. 267, § 1; Laws 1989, Ch. 197, § 1; Laws 1990, Ch. 325, § 1; Laws 1990, Ch. 411, § 2; Laws 1991, Ch. 156, § 1; Laws 1992, Ch. 228, § 1; Laws 1992, Ch. 341, § 1; Laws 1994, Ch. 130, § 1; Laws 1995, Ch. 32, § 15, eff. March 30, 1995; Laws 1995, Ch. 205, § 3; Laws 1996, Ch. 351, § 22; Laws 1997, Ch. 239, § 7; Laws 1997, Ch. 239, § 8, eff. Oct. 1, 1997; Laws 1999, Ch. 50, § 3; Laws 1999, Ch. 327, § 21; Laws 2000, Ch. 329, § 1; Laws 2001, Ch. 353, § 2; Laws 2002, Ch. 335, § 2; Laws 2004, Ch. 325, § 1; Laws 2006, Ch. 264, § 6; Laws 2007, Ch. 87, § 3; Laws 2008, Ch. 227, § 1; Laws 2009, Ch. 35, § 10; Laws 2009, 3rd S.S., Ch. 6, § 15; Laws 2010, Ch. 118, § 3; Laws 2010, Ch. 200, § 30, eff. April 28, 2010; Laws 2011, Ch. 27, § 25; Laws 2011, Ch. 347, § 2; Laws 2011, Ch. 357, § 24; Laws 2012, Ch. 66, § 4, eff. Aug. 2, 2012, retroactively effective to July 20, 2011; Laws 2013, Ch. 203, § 2; Laws 2015, Ch. 64, § 1; Laws 2016, Ch. 2, § 3; Laws 2017, Ch. 266, § 1.

Footnotes

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

² Section 38-865 et seq.

³ Section 32-1401 et seq. or 32-1800 et seq.

A. R. S. § 38-842, AZ ST § 38-842

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

End of Document

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Notes Of Decisions (40)

Absence

Military service should be considered an absence authorized by an employer, and, if the employee returns upon termination of military service, employee's absence should not be considered as interrupting his continuity of employment. Op.Atty.Gen. No. 74-33-L.

Accumulated contributions

Where public safety personnel retirement system member terminated his employment after termination of his temporary disability pension and applied for refund of his accumulated contributions, benefits paid would have to be apportioned among the sources of contribution to the benefits, and, therefore, member's pro rata share of the disability benefits paid to the member should be offset against the member's accumulated contributions so that the refund to the terminating member will be an amount equal to his contributions minus his pro rata share of disability benefits received. Op.Atty.Gen. No. 180-211, [1980 WL 28092](#).

Hazardous duty

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.

Election of benefits

Former paragraphs of statute defining an "employee" entitled to a retirement pension as any person who is a member of a group of public safety personnel regularly assigned to hazardous duty, and defining a "member" as any employee, excluding stenographic and clerical personnel, being paid full time as a municipal policeman, fireman, or law enforcement officer employed by state, is ambiguous and, when considered with § 38-842 paragraphs of a mandatory statute, must be construed as also excluding cooks and bottle washers as not being regularly assigned to hazardous duty. [Fund Manager, Public Safety Personnel Retirement System v. Pima County Sheriff Public Safety Personnel Retirement System Bd. \(App. Div.2 1985\) 145 Ariz. 47, 699 P.2d 921](#). [Public Employment 385](#)

Individual who, though sworn in by sheriff as a deputy sheriff, worked exclusively during entire time of her employment as a cook, whose duties included supervision of kitchen help at county jail, was not an "employee" under paragraphs of former statute and was not entitled to a retirement pension under Public Safety Personnel Retirement System inasmuch as she never carried a weapon, went out on a patrol, made an arrest, conducted a criminal investigation, nor engaged in any kind of hazardous duty whatsoever. [Fund Manager, Public Safety Personnel Retirement System v. Pima County Sheriff Public Safety Personnel Retirement System Bd. \(App. Div.2 1985\) 145 Ariz. 47, 699 P.2d 921](#). [Public Employment 385](#)

Public employee who, prior to his retirement, has worked under several systems, including public safety personnel retirement system, has right to elect benefits under one specific system under which he has worked, and all his benefits and his widow's benefits would then be computed under the specific system elected. Op.Atty.Gen. No. 69-8.

Members

Members - In general

A person not regularly assigned to hazardous duty is not eligible for membership in the public safety personnel retirement system. Op.Atty.Gen. No. 179-228, [1979 WL 23295](#).

An employee who has reached the age of 65 prior to his effective date, may not be considered for membership in the public safety personnel retirement system under a joinder agreement, even though he has sufficient years of service to qualify retirement on said effective date. Op.Atty.Gen. No. 70-3-L.

Campus security guards, members

Salary that full-time state university police officer received for part-time teaching at university was not part of his system-eligible compensation for purposes of determining his retirement benefits under the Public Safety Personnel Retirement System, of which university was a member, as teaching salary was not generated from officer's regular assignment to hazardous duty. [Loftus v. Arizona State University Public Safety Personnel Retirement System Local Bd.](#) (App. Div.1 2011) 227 Ariz. 216, 255 P.3d 1020, review denied. Education 1122(1); Public Employment 395

Before local board of university regents could include its campus security guards in state public safety personnel retirement system, board was required to determine that guards in question were regularly assigned to hazardous duties and were within one of expressly enumerated groups of eligible employees. [Arizona Bd. of Regents for and on Behalf of University of Arizona v. State ex rel. State of Ariz. Public Safety Retirement Fund Manager Adm'r](#) (App. Div.1 1989) 160 Ariz. 150, 771 P.2d 880. Education 1122(1); Public Employment 385

Members - Campus security guards

Salary that full-time state university police officer received for part-time teaching at university was not part of his system-eligible compensation for purposes of determining his retirement benefits under the Public Safety Personnel Retirement System, of which university was a member, as teaching salary was not generated from officer's regular assignment to hazardous duty. [Loftus v. Arizona State University Public Safety Personnel Retirement System Local Bd.](#) (App. Div.1 2011) 227 Ariz. 216, 255 P.3d 1020, review denied. Education 1122(1); Public Employment 395

Before local board of university regents could include its campus security guards in state public safety personnel retirement system, board was required to determine that guards in question were regularly assigned to hazardous duties and were within one of expressly enumerated groups of eligible employees. [Arizona Bd. of Regents for and on Behalf of University of Arizona v. State ex rel. State of Ariz. Public Safety Retirement Fund Manager Adm'r](#) (App. Div.1 1989) 160 Ariz. 150, 771 P.2d 880. Education 1122(1); Public Employment 385

Drug control district special agents, members

Drug control district special agents who joined the public safety personnel retirement system prior to August 27, 1977 were entitled to participate in the system, but whether post-August 27, 1977 district employees should continue in the system was a question left to the local board's judgment. Op.Atty.Gen. No. 180-191, [1980 WL 28072](#).

Arizona drug control district special agents who joined the public safety personnel retirement system between 1975 and 1977 would be entitled to participate in the system, and the appropriate local retirement board would have authority to determine whether district employees who joined the system between 1977 and 1980 were eligible to participate in the system or should have been covered under the state retirement plan, but district employees hired after July 31, 1980, would not be entitled to participate in the system. Op.Atty.Gen. No. 180-191, [1980 WL 28072](#).

Members - Drug control district special agents

Drug control district special agents who joined the public safety personnel retirement system prior to August 27, 1977 were entitled to participate in the system, but whether post-August 27, 1977 district employees should continue in the system was a question left to the local board's judgment. Op.Atty.Gen. No. I80-191, [1980 WL 28072](#).

Arizona drug control district special agents who joined the public safety personnel retirement system between 1975 and 1977 would be entitled to participate in the system, and the appropriate local retirement board would have authority to determine whether district employees who joined the system between 1977 and 1980 were eligible to participate in the system or should have been covered under the state retirement plan, but district employees hired after July 31, 1980, would not be entitled to participate in the system. Op.Atty.Gen. No. I80-191, [1980 WL 28072](#).

Fire fighters, members

Fire fighters employed by fire districts may not be members of public safety personnel retirement system merely on account of such employment. Op.Atty.Gen. No. I85-035, [1985 WL 70360](#).

Members - Fire fighters

Fire fighters employed by fire districts may not be members of public safety personnel retirement system merely on account of such employment. Op.Atty.Gen. No. I85-035, [1985 WL 70360](#).

Game and fish department, members

Game and fish commission could reasonably find that position of director of game and fish department is eligible for public safety personnel retirement system membership, and commission should execute an amendment to the game and fish joinder agreement with fund manager of the system to include position of game and fish department director in the system. Op.Atty.Gen. No. I82-006, [1982 WL 43817](#).

Members - Game and fish department

Game and fish commission could reasonably find that position of director of game and fish department is eligible for public safety personnel retirement system membership, and commission should execute an amendment to the game and fish joinder agreement with fund manager of the system to include position of game and fish department director in the system. Op.Atty.Gen. No. I82-006, [1982 WL 43817](#).

Indian tribes, members

Under statutes relating to public safety personnel retirement system, (§ 38-841 and this section) the only employers who may elect to extend system coverage to their employees are the state or its political subdivisions; therefore, the fund manager may not enter into a joinder agreement with the Navajo tribe to provide system coverage to the tribe's employees, since the Navajo tribe is not a political subdivision of the state. Op.Atty.Gen. No. I82-131, [1982 WL 43872](#).

Members - Indian tribes

Under statutes relating to public safety personnel retirement system, (§ 38-841 and this section) the only employers who may elect to extend system coverage to their employees are the state or its political subdivisions; therefore, the fund manager may not enter into a joinder agreement with the Navajo tribe to provide system coverage to the tribe's employees, since the Navajo tribe is not a political subdivision of the state. Op.Atty.Gen. No. 182-131, [1982 WL 43872](#).

Police pension act

Member who elected to be retired under Police Pension Act of 1937, § 16-1808, could receive a monthly pension benefit during period of reemployment by state or a political subdivision thereof. Op.Atty.Gen. No. 69-26.

Member who elected to retire under 1952 amendment to Police Pension Act of 1937, § 16-1808, would not be entitled to receive a monthly pension during period he was employed by state, a county, or a municipality. Op.Atty.Gen. No. 69-26.

Member who elected to retire under 1964 amendment to Police Pension Act of 1937, § 16-1808, would be entitled to receive a monthly pension benefit unless he were reemployed by municipality which had formerly employed him. Op.Atty.Gen. No. 69-26.

Reemployment, generally

Public safety personnel retirement system retiree, who was reemployed as superintendent of the department of liquor licenses and control, was not reemployed by an "employer" within the public safety personnel retirement system and, therefore was not subject to the limitations of § 38-849 providing that a nondisabled retired member should not receive pension payments and contribution should not be made on his account when reemployed by an "employer". Op.Atty.Gen. No. 177-237, [1977 WL 22161](#).

Fund manager of public safety personnel retirement system must immediately inform local board under which benefits originated of any benefit payments which the fund manager thinks are being improperly continued during the reemployment of a retired member such notification will afford local board the opportunity to correct the matter, and fund manager could then proceed to recover any wrongfully paid benefits. Op.Atty.Gen. No. 177-237, [1977 WL 22161](#).

Reinstatement

Department of Public Safety communications technician, who was formerly participating member of Public Safety Personnel Retirement System, but whose position was subsequently deleted from positions covered by system, and who quit but was reemployed within two years in former position, was entitled to reinstatement as member in system without transferral of his reinstated service credits to State Retirement System. [Norton v. Arizona Dept. of Public Safety Local Retirement Bd. \(1986\) 150 Ariz. 303, 723 P.2d 652](#). [Public Employment 400](#); [States 64.1\(1\)](#)

Posthumously reinstated highway patrolman's widow would be entitled to survivor's death benefits pursuant to statute relating to survivor's benefits. Op.Atty.Gen. No. 178-64, [1978 WL 18704](#).

Service

Service - In general

A person employed by the Game and Fish Department in a position other than a fish and game warden is not an

“employee” under the Public Safety Personnel Retirement System; therefore, this section, defining the term “service,” does not apply to employment in a position other than fish and game warden. Op.Atty.Gen. No. I86-101, [1986 WL 81355](#).

Game and fish department employee had a single retirement account with the public safety personnel retirement system (PSPRS) and his Arizona state retirement system (ASRS) account should have been transferred to his PSPRS account, where employee had been first employed by department on September 16, 1967, and was enrolled as a participant in the ASRS, and his account with that system continued until October 13, 1974 when he became eligible for coverage under PSPRS and thereafter maintained a PSPRS account and, on February 7, 1976, requested that his ASRS account be transferred into his PSPRS account, and the game and fish commission had affected, on July 1, 1971, participation in the PSPRS pursuant to a joinder agreement authorized by § 38-841. Op.Atty.Gen. No. I77-206, [1977 WL 22133](#).

Where, for a period from September 16, 1967, to July 16, 1971, game and fish department employee would have been qualified as a member of the public safety personnel retirement system (PSPRS) but, for a period from July 16, 1971, to October 13, 1974, the employee’s position would not have qualified him as a PSPRS member, prior period of employment would be considered as service under the PSPRS, but only 25% of his service during the second period could be considered as PSPRS service. Op.Atty.Gen. No. I77-206, [1977 WL 22133](#).

Military service may be considered as “service” under the Public Safety Personnel Retirement System. Op.Atty.Gen. No. 74-33-L.

Time spent by game and fish department employee prior to his becoming a member of the public safety personnel retirement system in positions not included in one of the classes of employment covered under the system in the joinder agreement between the system and the department, would be calculated at 25% for determining “service”. Op.Atty.Gen. No. 74-26.

Credit is given for all service, as defined in and calculated under § 38-842.20, accumulated by a member prior to the date of his becoming a member, and, for service accumulated after membership commences, credit is given under § 38-842.7 and, consequently, § 38-845, only for periods of service during which the member received compensation and made contributions to the retirement fund. Op.Atty.Gen. No. 74-26.

Credited service

Game and fish warden’s “credited service” under Public Safety Personnel Retirement System did not include his former term of employment with county sheriff’s department, which did not participate in System during his tenure, despite sheriff’s department’s subsequent participation in System and warden’s change of employment from sheriff’s department to Game and Fish Department. [Alexander v. Fund Manager, Public Safety Personnel Retirement System \(App. Div.1 1990\) 166 Ariz. 589, 804 P.2d 122](#). [Public Employment 400](#); [Sheriffs And Constables 28](#)

Retirement assets attributable to game and fish warden’s previous employment with county sheriff’s department, which had not participated in Public Safety Personnel Retirement System during his tenure, was not subject to transfer to System when warden’s subsequent employer, Game and Fish Department, elected to permit wardens to participate in System, unless warden withdrew retirement assets attributable to his service with sheriff’s department, tendered that amount plus accumulated interest to System, and paid unfunded liability; Local Public Safety Retirement Board of Game and Fish Department was not obligated to transfer benefits in question to System. [Alexander v. Fund Manager, Public Safety Personnel Retirement System \(App. Div.1 1990\) 166 Ariz. 589, 804 P.2d 122](#). [Public Employment 392](#); [Sheriffs And Constables 28](#)

Military service is “credited service” for public safety personnel retirement system purposes if it occurs prior to member’s

effective date, and, if it occurs after member's effective date, it would be considered "credited service" only if member received "compensation" from an "employer" as defined in this section and contributes to the public safety personnel retirement system fund during the period of military service. Op.Atty.Gen. No. 74-33-L.

Credit is given for all service, as defined in and calculated under § 38-842, accumulated by a public safety personnel retirement system member prior to the date of his becoming a member, and, for service accumulated after membership commences, credit is given under § 38-842 and, consequently, § 38-845 only for periods of service during which the member received compensation and made contributions to retirement fund. Op.Atty.Gen. No. 74-26.

Service - Credited service

Game and fish warden's "credited service" under Public Safety Personnel Retirement System did not include his former term of employment with county sheriff's department, which did not participate in System during his tenure, despite sheriff's department's subsequent participation in System and warden's change of employment from sheriff's department to Game and Fish Department. [Alexander v. Fund Manager, Public Safety Personnel Retirement System \(App. Div.1 1990\) 166 Ariz. 589, 804 P.2d 122 . Public Employment 400 ; Sheriffs And Constables 28](#)

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Military service is "credited service" for public safety personnel retirement system purposes if it occurs prior to member's effective date, and, if it occurs after member's effective date, it would be considered "credited service" only if member received "compensation" from an "employer" as defined in this section and contributes to the public safety personnel retirement system fund during the period of military service. Op.Atty.Gen. No. 74-33-L.

Credit is given for all service, as defined in and calculated under § 38-842, accumulated by a public safety personnel retirement system member prior to the date of his becoming a member, and, for service accumulated after membership commences, credit is given under § 38-842 and, consequently, § 38-845 only for periods of service during which the member received compensation and made contributions to retirement fund. Op.Atty.Gen. No. 74-26.

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 .](#)

Retirement

City employee was not entitled to noncommissioned position without approval of either city personnel department or city manager on ground that employee was demoted to position rather than transferred or appointed to it, where employee sought to retire from commissioned position and draw retirement benefits and continue city employment without break in service between commissioned and noncommissioned positions. [Woolison v. City of Tucson \(App. Div.2 1985\) 146 Ariz.](#)

298, 705 P.2d 1349 . [Municipal Corporations](#) 217.5 ; [Public Employment](#) 326

Accidental disability

Deputy sheriff was not entitled to accidental disability pension benefits based upon his claim of permanent disability as result of heart attack suffered while off duty; it was undisputed that biggest factors contributing to heart attack were deputy's heavy smoking, his family history of heart disease, his sedentary lifestyle, his high cholesterol levels, and his personal family problems concerning his divorce and ensuing custody battle. [Wills v. Pima County Public Safety Personnel Retirement Bd. \(App. Div.2 1987\) 154 Ariz. 435, 743 P.2d 944 .](#) [Public Employment](#) 389(4); [Sheriffs And Constables](#) 32

Reasonable range of duties

For purposes of definition of "temporary disability" under statute governing public safety retirement system, "reasonable range of duties" must be defined in context of surrounding circumstances; in rural setting with small police force, disabled officer who is unable to perform strenuous physical activity might not be able to perform "reasonable range of duties" for his department, but, in large metropolitan area, wide range of tasks are available and public policy favors maximum utilization of disabled employees. [Brodsky v. City of Phoenix Police Dept. Retirement System Bd. \(App. Div.1 1995\) 183 Ariz. 92, 900 P.2d 1228 .](#) [Municipal Corporations](#) 187(5); [Public Employment](#) 389(1)

Three-month light-duty assignment police department offered officer who suffered knee injury permitted him to perform "reasonable range of duties," so that officer was not entitled to temporary disability pension, even though officer lacked ability to make forceful arrest; there was no indication that assignment was outside those functions police officers generally perform. [Brodsky v. City of Phoenix Police Dept. Retirement System Bd. \(App. Div.1 1995\) 183 Ariz. 92, 900 P.2d 1228 .](#) [Municipal Corporations](#) 187(5); [Public Employment](#) 389(7)

Finding that police officer, who suffered knee injury, could perform three-month light-duty assignment police department offered him, so that he was not entitled to temporary disability pension, was supported by evidence that officer could be sedentary for two hours at a time, that he had made a number of four-hour airplane trips, and that rehabilitation would overcome condition. [Brodsky v. City of Phoenix Police Dept. Retirement System Bd. \(App. Div.1 1995\) 183 Ariz. 92, 900 P.2d 1228 .](#) [Municipal Corporations](#) 187(9); [Public Employment](#) 626(3)

Police officer who is temporarily unable to engage in physically strenuous activities may still be able to perform "reasonable range of duties" within police department and, thus, be ineligible for temporary disability pension. [Brodsky v. City of Phoenix Police Dept. Retirement System Bd. \(App. Div.1 1995\) 183 Ariz. 92, 900 P.2d 1228 .](#) [Municipal Corporations](#) 187(5); [Public Employment](#) 389(2)

Amendment of statute governing public safety personnel retirement system to define "temporary disability" in terms of conditions preventing employee from performing "reasonable range of duties," rather than "regularly assigned duties," narrowed that definition. [Brodsky v. City of Phoenix Police Dept. Retirement System Bd. \(App. Div.1 1995\) 183 Ariz. 92, 900 P.2d 1228 .](#) [Public Employment](#) 389(2)

Validity (4)

Proposed Legislation (4)

[2019 AZ H.B. 2088 \(NS\)](#)

2019 Arizona House Bill No. 2088, Arizona Fifty-Fourth Legislature - First Regular Session, (Apr. 29, 2019), VERSION: Introduced, PROPOSED ACTION: Amended

[2019 AZ S.B. 1452 \(NS\)](#)

2019 Arizona Senate Bill No. 1452, Arizona Fifty-Fourth Legislature - First Regular Session, (Feb. 05, 2019), VERSION: Introduced, PROPOSED ACTION: Amended

[2019 AZ S.B. 1452 \(NS\)](#)

2019 Arizona Senate Bill No. 1452, Arizona Fifty-Fourth Legislature - First Regular Session, (Feb. 04, 2019), VERSION: Filed, PROPOSED ACTION: Amended

[2019 AZ H.B. 2088 \(NS\)](#)

2019 Arizona House Bill No. 2088, Arizona Fifty-Fourth Legislature - First Regular Session, (Jan. 15, 2019), VERSION: Filed, PROPOSED ACTION: Amended

Context and Analysis (1)

Administrative Code References (1)

Public safety retirement system eligibility, see [A.A.C. R13-5-804](#).

[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).

End of Document

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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)

Editor's and Revisor's Notes (33)

HISTORICAL AND STATUTORY NOTES

The 1971 amendment substituted "twenty years of credited service" for "twenty-five years of credited service" in the first sentence of subsec. B [deleted in 1980 amendment].

For effective date provision of Laws 1971, Ch. 143, see Historical and Statutory Notes following § 38-842.

The 1980 amendment deleted "coinciding with or next" following "first day of the month" in the second sentence of subsec. A, the second sentence of subsec. B, and the second sentence of subsec. H [now subsec. I]; deleted "thereof" following "last payment" in the second sentence of subsec. A, the third sentence of subsec. B, and the third sentence of subsec. H [now subsec. I]; substituted "last day of the month" for "first day of the month" in the second sentence of subsec. A and the third sentence of subsec. B; deleted "after completion of at least twenty years of credited service," preceding "or accidental disability" in the first sentence of subsec. B; deleted the second sentence of subsec. C, which had read: "The board shall have the right to waive the requirement for a medical examination if it determines that such an examination is unnecessary."; deleted "either of" preceding "the following" in the introductory paragraph and added par. 3 in subsec. D [now subsec. C]; and rewrote par. 1 of subsec. E [now subsec. D], which had read:

"1. If under ordinary disability, has sufficiently recovered, in the opinion of the board, based on a medical examination by a doctor or clinic appointed by the board, to be able to engage in regular employment with his employer and refuses an offer of employment by his employer."

The 1980 amendment also added the fifth sentence of subsec. F.

The 1983 amendment substituted "local board" for "board" throughout the section; and deleted subsec. C, which had read:

" C. Disability under the system shall be considered total and permanent if, on the basis of a medical examination by a doctor or clinic appointed by the board, the board finds that the member has a physical or mental condition which qualifies as accidental or ordinary disability."

The 1983 amendment also redesignated former subsecs. D to I as subsecs. C to H; substituted references to an accidental or ordinary disability pension for references to a permanent disability pension throughout subsecs. B and C; substituted references to an accidental disability pension for references to a permanent disability pension in subsec. E; inserted "accidental or ordinary" preceding "disability" in subsec. F; substituted "or the expiration of a period" for ", but in no event prior to the expiration of a period" in the second sentence of subsec. B and the second sentence of subsec. G; inserted ", whichever is later" following "sick leave payments or a temporary disability pension" in the second sentence of subsec. B and the second sentence of subsec. G; substituted "A physical or mental condition" for "A physical condition" in par. 3 of subsec. C; and, in subsec. D, rewrote the introductory paragraph, which had read:

" E. Disability shall be considered to have ceased and a permanent disability pension shall not become payable if, prior to his normal retirement date, the member:",

substituted "an employer in the system" for "his employer" in par. 1, and added the last two sentences of the subsection.

The 1983 amendment also substituted "§ 38-849, subsection D" for "subsection E of § 38-849" in subsec. F; and substituted "local board finds upon application that the member has an accidental or ordinary disability, the member shall thereupon be eligible for an accidental or ordinary disability pension" for "board deems the member to be under accidental disability, the member shall thereupon be eligible for an accidental disability pension" in subsec. H.

The 1988 amendment, in subsec. E, inserted “or ordinary” in two places.

The 1994 amendment by Ch. 356 designated the last paragraph of subsec. D as subsec. E; deleted existing subsec. E; inserted new subsec. F and redesignated existing subsecs. F to H as G to I, accordingly. Former subsec. E had read:

“ E. An accidental or ordinary disability pension shall be reduced in the period prior to his normal retirement date, if the member engages in any substantial gainful employment which is found by the local board to be other than for the primary purpose of rehabilitation. The amount of reduction shall be equal to one dollar of pension for each two dollars of earned income. The local board shall have the right to suspend payments of an accidental or ordinary disability pension if the disabled member fails to report earned income. Such suspension shall be for the period there is no satisfactory report with restoration of benefits upon acceptance of such report or until the member’s normal retirement date, whichever occurs earlier. If, in the opinion of the local board, the reduction provided in this subsection is insufficient to recover monies previously paid to a member, each local board may, in its sole discretion, bring an action to recover any outstanding balance due, notwithstanding any other rights the local board possesses.”

The 1996 amendment by Ch. 318 neutralized gender references and made nonsubstantive language changes throughout; and in subsec. B, substituted “by reason of” for “prior to his normal retirement date by reason of ordinary disability or” following “terminated” in the first sentence, and inserted the second sentence, relating to terminations due to ordinary disabilities.

[Laws 1996, Ch. 318, § 2](#) , provides:

“ **Sec. 2. Retroactivity**

“ Section 38-844, Arizona Revised Statutes , as amended by this act, applies retroactively to from and after June 30, 1995.”

The 1997 amendment by Ch. 239 inserted the third and fourth sentences of subsec. B relating to filing application for disability pension.

The 2004 amendment by Ch. 91 deleted references to accidental disability pension in subsec. F.

The 2004 amendment by Ch. 325 inserted new subsec. C and redesignated existing subsecs. C and D as D and E, accordingly; inserted new subsec. F and redesignated existing subsecs. E through I as G through K, accordingly; inserted references to catastrophic disability pension in subsec. B and in redesignated subsec. D; and made nonsubstantive changes.

The 2004 amendment of this section by Ch. 325, § 2 explicitly amended the amendment of this section by [Laws 2004, Ch. 91, § 1](#).

[Laws 2004, Ch. 325, § 8](#) , relating to a legislative council study on retiree health insurance; contract; scope of study; reimbursement of costs; report, and § 9 relating to a retiree health insurance reporting requirement, were repealed by § 10 of the act October 1, 2005.

[Laws 2004, Ch. 325, § 11](#) , provides:

“ **Sec. 11. Continuation of catastrophic disability pension**

“Any person who has been awarded a catastrophic disability pension pursuant to this act is entitled to continue to receive the pension as long as the person maintains eligibility as determined by the local board.”

The 2009 amendment by Ch. 35 added subsec. L; and made nonsubstantive changes throughout the section.

The 2010 amendment by Ch. 118 deleted subsec. H; and redesignated existing subsecs. I to L as H to K, accordingly.

Deleted subsec. H had read:

“ **H.** An ordinary disability pension shall be reduced in the period before the member’s normal retirement date if the member engages in any employment and if the member’s income from this employment is greater than the member’s pension unreduced by this subsection. The amount of the reduction shall be equal to the difference between the member’s income from employment and the member’s unreduced pension. The local board shall have the right to suspend payments of an ordinary disability pension if the disabled member fails to report earned income. Such suspension shall be for the period there is no satisfactory report with restoration of benefits on acceptance of such report or until the member’s normal retirement date, whichever occurs earlier. If, in the opinion of the local board, the reduction provided in this subsection is insufficient to recover monies previously paid to a member, each local board, in its sole discretion, may bring an action to recover any outstanding balance due, notwithstanding any other rights the local board possesses.”

The 2010 amendment by Ch. 200 substituted “board of trustees” for “fund manager” in the third sentence of subsec. C; and substituted “medical examination requested by the local board” for “medical examination requested by the board” in subsec. E, par. 2 and in the penultimate sentence of subsec. F.

The 2012 amendment by Ch. 136 substituted “§ 38-849, subsection E” for “§ 38-849, subsection D” in subsec. H.

The 2013 amendment by Ch. 203 inserted “but not earlier than § 38-845.02 allows for retroactive payments” at the end of the fifth sentence of subsec. B; substituted “a designated physician or a physician working in a clinic that is appointed by the local board” for “a physician or a clinic appointed by the local board” once in subsec. E, par. 1 and twice in subsec. F; rewrote subsec. H; and made nonsubstantive changes. Subsection H had read:

“ **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 pension payable on the member’s subsequent retirement shall be determined as provided in § 38-849, subsection E.”

Reviser’s Notes:

2010 Note. Prior to the 2012 amendment, this section contained the amendments made by [Laws 2010, Ch. 118](#) , sec. 5 and Ch. 200, sec. 35 that were blended together pursuant to authority of § 41-1304.03.

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.

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. § 38-859

§ 38-859. Medical boards; purposes; composition; medical examinations

Effective: September 13, 2013

Currentness

A. The purposes of a medical board are to:

1. Identify a physical or mental condition or injury that existed or occurred prior to the member's date of membership in the system and for which benefits may otherwise be limited by § 38-844, subsection D.
2. Evaluate a member's eligibility for an accidental disability pension.
3. Evaluate a member's eligibility for an ordinary disability pension.
4. Evaluate a member's eligibility for a temporary disability pension.
5. Evaluate a member's eligibility for a catastrophic disability pension.
6. For the purposes of § 38-846, determine through appropriate medical evidence the proximate cause of death for members who are killed in the line of duty if the death occurs more than one year after the date of injury.

B. For the purpose of determining a disability, the medical board shall be composed of a designated physician or physicians working in a clinic other than the employer's regular employee or contractee. Employees employed after October 1, 1992 shall undergo a medical examination for the purpose of identifying a physical or mental condition or injury that existed or occurred prior to a member's date of membership in the system and for which benefits may otherwise be limited by § 38-844, subsection D, and for this purpose, the medical board shall be composed of a designated physician or physicians working in a clinic that may be the employer's regular employee or contractee.

C. A finding of accidental, ordinary, temporary or catastrophic disability shall be based on medical evidence by a designated physician or a physician working in a clinic that is appointed by the local board pursuant to § 38-847, subsection D, paragraph 9 that established the disability. The local board shall resolve material conflicts in medical evidence. If required, the local board may employ other physicians or clinics to report on special cases. With the approval of the local board, a designated physician or physicians working in a clinic that is employed by the local board may employ occupational specialists to assist the designated physician or physicians working in a clinic in rendering an opinion.

D. All employees shall undergo medical examinations before a designated physician or a physician working in a clinic that is appointed by the local board pursuant to and for the reasons prescribed in this article. An employee who fails to comply with this subsection waives all rights to disability benefits under this article.

E. The examining physician or clinic shall report the results of examinations to the local board, and the secretary of the local board shall preserve the report as a permanent record. Medical examinations conducted pursuant to this article shall be conducted by a physician and shall not be conducted or utilized for the purposes of hiring, advancement, discharge, job training or other terms, conditions and privileges of employment unrelated to the receipt of or qualification for pension benefits or service credits under the system.

F. This section does not affect or impair the right of an employer to prescribe medical or physical standards for employees or prospective employees.

Credits

Added by [Laws 1992, Ch. 340, § 2](#). Amended by [Laws 2004, Ch. 325, § 7](#); [Laws 2012, Ch. 136, § 11](#); [Laws 2013, Ch. 203, § 12](#).

A. R. S. § 38-859, AZ ST § 38-859

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

End of Document

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Notes Of Decisions (1)

Construction and application

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

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Context & Analysis

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Editor's and Revisor's Notes

There are no Editor's and Revisor's Notes for this citation.