

[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)

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.