

MAINE STATE LEGISLATURE

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November 1, 1973

W. G. Blodgett, Executive Director

Maine State Retirement System

Charles R. Larouche, Assistant

Attorney General

Entitlement to Survivor Benefits upon Service-Connected Death of Occupational Disability Retiree.

This replies to your memo of October 29, 1973, on this subject.

I understand your question to be: Whether or not a surviving spouse is entitled to survivor benefits when her husband, who was given an occupational disability retirement allowance on June 18, 1970, died on January 1, 1973, from a disability illness connected cause. The answer to that question is affirmative.

5 M.R.S.A. § 1124, subsection 2, provides:

"Should a member die as the result of illness or injury received in line of duty while in the service of the State of Maine, irrespective of the number of years of creditable service, paragraph B, subparagraph (1), divisions (a), (b), (c) or (e) shall be payable if applicable."

The occupational disability retiree is necessarily a member who received an illness or injury in the line of duty while in the service of the State of Maine. His subsequent death from a cause connected with that illness or injury is the death of a member "as the result of illness or injury received in line of duty. . . ." The fact that in the interim between incurrence of the illness or injury and the death therefrom, the Board placed him on an occupational disability retirement allowance does not alter the fact that the statutorily required causation did occur. Such causation commenced while he was indisputably a member and he did not thereafter withdraw from the System. It would seem to unduly strain the statutory language to read into it a further requirement that such a person must also die while in the actual line of duty or that he must also die while in active service. There is nothing to indicate a legislative intent that this subsection should be given such a narrow and restrictive construction. Indeed, as you have observed in your memorandum request, several related statutory sections appear to indicate a contrary intent.

CHARLES R. LAROCHE
Assistant Attorney

CRL:mm

NOT A FORMAL OPINION