

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

Retirement Eligibility For disability
Retirement; timing of re-deposit of withdrawn contributions
5 M.R.S.A. § 1121
5 M.R.S.A. 1094-10

PHILIP E. BRINNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

July 12, 1978

To: W. G. Blodgett, Executive Director, Maine State Retirement System

From: Kay R. H. Evans, Assistant Attorney General

Re: Eligibility to Apply for Disability Benefits under Chapter 622, P.L. 1975.

Your memo of January 24, 1978, raises two issues with respect to Retirement System members' eligibility to apply for disability benefits under 5 M.R.S.A. § 1121, in the version enacted by P.L. 1975, c. 622, § 54 and P.L. 197, c. 450.

FACTS:

Your memo and background material provided indicate that an employee of a participating local district was a Retirement System member from 1963 to 1970 when he separated from service and withdrew his contributions. In 1974, he was re-employed with the same participating local district and again became a contributing member.^{1/} On July 6, 1977, he again separated. His application for disability retirement benefits, dated July 12, 1977, was received by the Retirement System on July 21, 1977.

^{1/} On July 1, 1976, the employer inquired for the employee as to the cost of re-depositing the previously withdrawn contributions. Authorization for payroll deductions to cover the repayment was sent by the Retirement System to the participating local district on November 22, 1976, but no extra deductions were ever made.

The participating local district-employer accepted, prior to this employee's application for benefits, the disability benefit provisions enacted by P.L. 1975, c. 622, § 54, as amended by P.L. 1977, c. 450.^{2/} Section 54 of Chapter 622 established new criteria for eligibility for disability benefits and new benefit levels. Chapter 450 dealt with eligibility for these benefits, providing,

Members with less than 5 years continuous creditable service immediately preceding their application for a disability allowance are not eligible for that disability retirement allowance if the disability is the result of a physical or mental condition which existed prior to the person's latest membership in the System, unless the disability is the result of, or has been substantially aggravated by, an injury or accident received in the line of duty.
P.L. 1977, c. 450, § 2.

You indicate that the member's application for disability retirement benefits was denied "inasmuch as he did not have 5 years of membership service prior to his application, and his medical reports indicated treatment for his illness prior to his second employment." This denial has been protested on the ground that the member's disabling condition was aggravated by his employment. You have asked whether the denial was proper.

The issue has also been raised whether the member, if he now redeposited the contributions made during his first employment period and withdrawn in 1970, would become eligible to apply for a disability retirement allowance under the disability retirement provisions in effect during that period

OPINION:

The challenge to the denial of disability benefits raises the issue of the extent to which and the conditions under which a pre-existing physical or mental condition renders an employee without 5 years continuous service ineligible for a disability benefit. Clearly, the mere existence of a pre-existing physical or mental condition which has some relationship to the disability does not render an applicant ineligible. The issue is whether, how and to what extent the disability, related to the pre-existing condition, is also related to the member's employment. Thus, where there is a pre-existing condition to which the disability is related, factual determinations must be made with respect to: (1) Whether the pre-existing condition has become disabling as a result of injury or accident received in the line of duty; (2) whether the pre-existing condition has become disabling because substantially aggravated by injury or accident received in the line of duty; (3) whether the disabling factors

^{2/} These chapters replaced the prior disability provisions of 5 M.R.S.A. § 1122. Both were effective as of July 1, 1977. Previous to its acceptance of the new disability provisions, this local district had provided disability benefits under the provisions of § 1122.

attributed to the employment situation constitute "injury" or "accident," and (4) whether such injury or accident occurred in the line of duty.

Your memo suggests that the denial in this case was made on the basis that because the member's disability was traced to a pre-existing condition, he was ineligible for a disability allowance. In my opinion, this is not a proper interpretation of the statute. The determinations specified above must be made when there is a relationship between a disability and a pre-existing physical or mental condition. It would be best to be quite explicit in making and stating these determinations.

The issue of redeposit of previously withdrawn contributions involves two questions: Whether the member may now redeposit the contributions in question and, if he may, whether such redeposit would enable him to apply for a disability benefit under the prior plan.

5 M.R.S.A. § 1094(10) provides:

Any former member who withdrew his contribution after termination of service may, upon later restoration to membership and prior to the date any retirement allowance becomes effective for him, deposit in the Member's Contribution Fund by a single payment or by an increased rate of contribution an amount equal to the accumulated contributions withdrawn by him. . . .

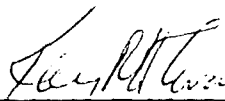
Thus, former members may redeposit withdrawn contributions at any time "prior to the date any retirement allowance becomes effective for (the member)." It appears that the effective date of a retirement allowance has been administratively defined as the date as of which an allowance is payable. That administrative definition should be applied to resolve the question of whether the member may now redeposit the contributions in question.

Assuming that the member may now make the redeposit, the question remains whether such redeposit would qualify him to apply for disability benefits on the basis of criteria included in the prior disability provisions. The relevant criterion is the accumulation of 10 years creditable service prior to the attainment of age 60. The precise question is whether a member, having met these criteria prior to July 1, 1977, remains eligible on the basis thereof to apply for a disability benefiter after July 1, 1977 .

Regulations of the Board of Trustees deal with eligibility to apply for disability benefits,^{3/} but cannot and do not explicitly cover the spectrum of possible situations. The Board's regulations provide in relevant part

2. Eligibility to apply for a disability retirement allowance of any member who separated from state service before the effective date of Chapter 622, P.L. 1975 and Chapter 450, P.L. 1977 (July 1, 1977) will be determined under the provisions of 5 M.R.S.A. § 1122 in effect prior to July 1, 1977. That is, such members must have had 10 years or more of creditable service, not have attained age 60 and have separated from service due to illness or injury.

The regulation was developed to implement the Board's interpretation of the Legislature's intent in enacting Chapter 450 that the new disability plan, more readily available and providing more benefits than its predecessor, was nonetheless meant only to apply prospectively. Thus, the Board required that members separated from service prior to July 1, 1977, meet criteria in effect at the time of their separation. While this regulation does not explicitly cover the type of situation presented in your memo, consistent, fair treatment would seem to require that any member who, prior to July 1, 1977, met the criteria then in effect would remain eligible to apply for a disability benefit under those criteria. For example, in the present situation, assuming that the redeposit of contributions is now possible, it would have to be determined whether the creditable service from the former employment period covered by the redeposit, added to creditable service for the latest employment period, would equal 10 years of creditable service accumulated prior to July 1, 1977. If so, and since the member has not reached age 60, he would remain eligible to apply for disability benefits under the disability provisions.



KAY R. H. EVANS
Assistant Attorney General

KRHE/ec

^{3/} "Rules Governing the Eligibility of MSRS Members to Apply for Disability Retirement Benefits," Retirement System memo, February 14, 1978.