

MAINE STATE LEGISLATURE

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80-141



RICHARD S. COHEN
ATTORNEY GENERAL

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

October 6, 1980

William G. Blodgett
Executive Director
Maine State Retirement System
State House
Augusta, Maine 04333

Re: Continued Creditable Service for Disability
Retirees under 5 M.R.S.A. § 1094(15) and 5
M.R.S.A. § 1122(3).

Dear Bill:

You have requested an opinion on the question of whether a recipient of a disability retirement allowance may, having been credited with 25 years of service^{1/} or having reached age 60, change on her request to a service retirement allowance. We answer in the negative, on the basis of the relevant statutory provisions.

Title 5 M.R.S.A. § 1122(3)(A) and (B) directs that:

A. The disability retirement allowance of a beneficiary shall cease on the 10th anniversary of his normal retirement age, as defined in section 1001, subsection 27, or prior thereto whenever the service retirement allowance of beneficiary would equal or exceed the amount of his disability retirement allowance.

B. A service retirement allowance shall be paid to the beneficiary commencing at the date of termination of the disability retirement allowance as determined in paragraph A."

^{1/} Disability retirees are credited with one year of service per year of receipt of disability retirement allowance payments, for purposes of determining when the applicable regular service retirement allowance would equal or exceed the disability allowance. 5 M.R.S.A. § 1094(15) and § 1122(3)(A).

This section provides the only explicit statutory mechanism for a change from disability to service retirement. The provision is mandatory, involving no election or discretion by either the beneficiary or the System. There is no provision in the retirement law for an optional change in type of retirement in the circumstances you have outlined, nor in any other circumstances. From the presence in the statute of the express provision set forth above, it is properly inferred that had the Legislature intended to direct or permit the change from disability to service retirement on any other basis, it would have done so explicitly. The mandatory nature of § 1122(3) is further evidence against any legislative intent to permit an optional change.

The apparent reason or policy behind mandating such a change only when the disability and service retirements are equivalent appears elsewhere in the retirement law. Section 1122(5-A) provides that a disability allowance payable under the law is to be offset by any benefits received for the same disability under workers' compensation or Social Security. No such offset against service retirement benefits is required. If a disability retiree could change to a service retirement under conditions other than equivalence of benefit amounts, such a retiree could thereby obtain a higher total amount than the Legislature evidently intended to be available.

Very truly yours,


PAUL F. MACRI
Assistant Attorney General

PFM/ec