

Roxanne Donoyan

From: Chris Magnotta <cmagnotta@lovetlaw.com>
Sent: Wednesday, January 09, 2019 2:11 PM
To: Roxanne Donoyan
Subject: [EXTERNAL]David Jencks

Roxanne Donoyan:

This e-mail serves to confirm that neither Attorney Harnett nor Mr. Jencks will be in attendance at the January 16, 2019 hearing before the Retirement Board. They are in agreement that the Board can make its decision based off the records. Kindly forward to this office a copy of the decision when it is available.

Thank you.

Christine Magnotta
Secretary to:
John M. Harnett, Esq.
(401) 734-1263 - phone
(401) 738-4838 - fax

From: John Harnett <jharnett@lovettlaw.com>
Sent: Monday, December 10, 2018 12:31 PM
To: Michael P. Robinson <mrobinson@shslawfirm.com>
Subject: RE: Jencks v. ERSRI

Mike,

I have spoken to Mr. Jenks. We see no need to attend the meeting before the Board as we have nothing else to present.

John

From: Michael P. Robinson [<mailto:mrobinson@shslawfirm.com>]
Sent: Friday, December 7, 2018 3:04 PM
To: John Harnett <jharnett@lovettlaw.com>
Cc: Allison Y. Charette <acharette@shslawfirm.com>
Subject: Jencks v. ERSRI

Hi John—this matter is scheduled to come before the Board on December 18. When I saw you last in court, my recollection is that you mentioned you may not challenge the Hearing Officer's recommendation. Can you let me know if you intend to appear and present argument on this at the Board meeting, so I can advise the Board and administration accordingly?

Mike

Michael P. Robinson
Attorney at Law

www.shslawfirm.com

ALPHEUS AT LAW



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Employees' Retirement System of Rhode Island

ERSRI Board:

December 6, 2018

Seth Magaziner
General Treasurer
Chair

John M. Harnett, Esq.
300 Centerville Road
Summit East, Suite 200
Warwick, RI 02886

William B. Finelli
Vice Chair

Roger P. Boudreau

RE: *Notice of Full Board Meeting*
David C. Jencks, Jr., vs. Employees' Retirement System of Rhode Island

Mark A. Carruolo

Dear Attorney Harnett:

Brian M. Daniels

Michael DiBiase

Please be advised that the Hearing Officer has issued an opinion in agreement with decision of the Employees' Retirement System of Rhode Island (ERSRI) to process Mr. Jencks' accidental disability application as a state employee in which he was awarded a 50% pension benefit.

Paul L. Dion

Thomas M. Lambert

John P. Maguire

In accordance with Regulation 1.4 of the Rules of Practice and Procedure of the Employees' Retirement System for Hearings on Contested Cases, this matter will be presented to the full Retirement Board for approval or denial at the January 16, 2019 Retirement Board Meeting. You have the right to appear before the Retirement Board and make oral argument in support of or in opposition to the Hearing Officer's decision.

Marianne F. Monte

Thomas A. Mullaney

Claire M. Newell

The January meeting of the Retirement Board is scheduled for:

Marcia B. Reback

DATE: Wednesday, January 16, 2019
TIME: 9:30 a.m.
LOCATION: 2nd Floor Conference Room
50 Service Avenue
Warwick, Rhode Island 02886

Jean Rondeau

Laura Shawhughes

Frank J. Karpinski
Executive Director

If you are unable to attend this meeting, please notify me at 462-7608 as soon as possible. Should the meeting be rescheduled, we will notify you of the new date and time of the meeting.

Sincerely,


Roxanne Donoyan

cc: David C. Jencks, Jr.
Michael P. Robinson, Esq.

Enclosure Employees' Retirement System of Rhode Island Rules &
Regulations, Regulation 1.4

1.4 Rules of Practice and Procedure for Hearings in Contested Cases

A. Introduction

1. These Rules of Practice and Procedure are promulgated pursuant to R.I. General Laws Section 36-8-3. The Rules shall be in effect during any hearing on a contested case before the Retirement Board or its duly authorized representatives.

B. Definitions

1. The definitions set forth in R.I. General Laws Sections 36-8-1, 45-21-2, 45-21.2-2 and 16-16-1, and as further set forth in Regulations promulgated by the Retirement Board, are specifically incorporated by reference herein.
 - a. "Contested case" means a matter for which a member requests a hearing because he or she is aggrieved by an administrative action other than a Disability decision. The term shall apply to hearings conducted before Hearing Officers, and thereafter in proceedings before the full Retirement Board.
 - b. "Party" means any member, beneficiary, Retirement System, or such other person or organization deemed by the Hearing Officer to have standing.
 - c. "Hearing Officer" means an individual appointed by the Retirement Board to hear and decide a contested case.

C. Request for Hearing and Appearance

1. Any member aggrieved by an administrative action other than a Disability decision, may request a hearing of such grievance. Upon such request, the matter will be deemed a contested case. The procedure for Disability decisions and appeals therefrom shall be governed by the procedures set forth in Section 1.9, Rules Pertaining to the Application to Receive an Ordinary or Accidental Disability Pension.
2. Such request shall be in writing and shall be sent to the Retirement Board within sixty (60) days of the date of a letter from the Executive Director or Assistant Executive Director constituting a formal administrative denial.
3. A request for hearing shall be signed by the member and shall contain the following information:
 - a. Name of member;
 - b. Date and nature of decision being contested;

- c. A clear statement of the objection to the decision which must include the reasons the member feels he or she is entitled to relief; and
 - d. A concise statement of the relief sought.
4. Requests for hearing should be sent to the Retirement Board at 50 Service Avenue, 2nd Floor, Warwick, RI 02886-1021.
 5. Failure to strictly comply with the procedures outlined in this Section shall be grounds to deny any request for a hearing.

D. Contested Cases – Notice of Hearing

1. Upon receipt of a request for hearing in matters other than Disability decisions and appeals therefrom, the Retirement Board or its designee shall appoint a Hearing Officer. The appointed Hearing Officer shall hear the matter, find facts and offer conclusions of law to the Retirement Board. The decision of a Hearing Officer shall be subject to approval by the full Retirement Board. The Retirement System's action shall not be deemed final until such time as the Hearing Officer's recommendation has been voted upon by the Retirement Board.
2. Within forty-five (45) days after receipt by the Retirement Board of a request for hearing, the Retirement Board shall give notice that the matter has been assigned to a Hearing Officer for consideration.
3. In any contested case, all parties shall be afforded an opportunity to be heard after reasonable notice.
4. The notice described in subsection (2), above, shall include:
 - a. A statement of the time, place, and nature of the hearing;
 - b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
 - c. A reference to the particular sections of the statutes and rules involved;
 - d. The name, official title and mailing address of the Hearing Officer, if any;
 - e. A statement of the issues involved and, to the extent known, of the matters asserted by the parties; and
 - f. A statement that a party who fails to attend or participate in the hearing may be held to be in default and have his or her appeal dismissed.

5. The notice may include any other matters the Hearing Officer or the Retirement Board considers desirable to expedite the proceedings.

E. Contested Cases – Hearings in General

1. All parties shall be afforded an opportunity to respond and present evidence and argument on all issues involved.
2. Members must appear at hearings either personally, or by appearance of legal counsel. Members may represent themselves or be represented by legal counsel at their own expense. Consistent with RIGL §11-27-2 entitled, "Practice of law", any person accompanying the member who is not a lawyer (certified member of the bar of the State of Rhode Island) cannot represent the member in the hearing.
3. Continuances and postponements may be granted by the Hearing Officer or the Retirement Board at their discretion.
4. Disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.
5. Should the Hearing Officer or Retirement Board determine that written memoranda are required, the member will be notified by the Hearing Officer or the Retirement Board of the need to file a written document which discusses the issues of the case. Memoranda of law may always be offered in support of arguments offered by the member or the representative of the retirement systems.
6. The Executive Director may, when he or she deems appropriate, retain independent legal counsel to prosecute any contested case.
7. A recording of each hearing shall be made. Any party may request a transcript or copy of the tape at their own expense.

F. Contested Cases - Conduct of Hearings before Hearing Officers

1. Hearings shall be conducted by the Hearing Officer who shall have authority to examine witnesses, to rule on motions, and to rule upon the admissibility of evidence.
2. The Hearing shall be convened by the Hearing Officer. Appearances shall be noted and any motions or preliminary matters shall be taken up. Each party shall have the opportunity to present its case generally on an issue by issue basis, by calling and examining witnesses and introducing written evidence.
3. The Member shall first present his or her case followed by presentation of the Retirement System's case.

4. The Hearing Officer shall have the authority to continue or recess any hearing and to keep the record open for the submission of additional evidence.
5. If for any reason a Hearing Officer cannot continue on a case, another Hearing Officer will be appointed who will become familiar with the record and perform any function remaining to be performed without the necessity of repeating any previous proceedings in the case.
6. Each party shall have the opportunity to examine witnesses and cross-examine opposing witnesses on any matter relevant to the issues in the case.
7. Any objections to testimony or evidence and the basis for the objection shall be made at the time the testimony or evidence is offered.
8. The Hearing Officer may question any party or any witness for the purpose of clarifying their understanding or to clarify the record.
9. The scope of hearing shall be limited to those matters specifically outlined in the request for hearing.
10. Written evidence will be marked for identification. If the original is not readily available, written evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original.
11. Findings of fact shall be based solely on the evidence and matters officially noticed.
12. If a member fails to attend or participate in the hearing as requested, the Hearing Officer may default such member and dismiss his or her appeal with prejudice.

G. Contested Cases – Record of Proceedings before Hearing Officers

1. The record in a contested case shall include:
 - a. All pleadings, motions, intermediate rulings;
 - b. Evidence received or considered;
 - c. A statement of matters officially noticed;
 - d. Questions and offers of proof and rulings thereon;
 - e. Proposed findings and exceptions;

- f. Any decision, opinion, or report by the Hearing Officer at the hearing;
and
 - g. All staff memoranda or data submitted to the Hearing Officer in connection with their consideration of the case.
- H. Ex Parte Communications (Communications by one party)
 - 1. There shall be no communications between the Hearing Officer and either a member, the Retirement System or the Retirement Board, or any of their representatives regarding any issue of fact or law in a case, without notice and opportunity for all parties to participate. There shall be no written communications by any party that are not transmitted at the same time to all parties.
- I. Rules of Evidence in Contested Cases:
 - 1. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the superior courts of this state shall be followed. Evidence not usually admitted under the rules of evidence for civil cases may be admitted where it is shown that such evidence is necessary to ascertain facts not capable of being proved otherwise. The Hearing Officer and the Retirement Board shall give effect to the rules of privilege (such as attorney/client privilege) recognized by law. Objections to evidence may be made and shall be noted in the record. Any part of the evidence may be received in written form when a hearing needs to be expedited and the interests of the parties will not be hurt substantially.
- J. Final Decision and Member Right of Appeal
 - 1. Within twenty-five (25) days after receipt of the Hearing Officer's recommendation, a copy thereof shall be served upon all parties to the proceeding and each party shall be notified of the time and place when the matter shall be considered by the Retirement Board. Each party to the proceeding shall be given the right to make exceptions, to file briefs and to make oral arguments before the Retirement Board. No additional evidence will be considered by the Retirement Board once the Hearing Officer has issued a recommendation. A party wishing to file a brief or make exceptions to the recommendation of the Hearing Officer shall be required to submit the same to the Executive Director not later than ten (10) days prior to the date when the Retirement Board is scheduled to hear and act upon the recommendation of the Hearing Officer. The aggrieved party and his or her representative shall have the right to appear before the Retirement Board and make oral argument at the time of such hearing. No new testimony will be taken, or evidence considered at this time. Consistent with RIGL §11-27-2 entitled, "Practice of law" any person accompanying the member who is not a lawyer (certified member of the bar of the State of Rhode Island), cannot represent the member before the Retirement Board. After consideration of

the decision of the Hearing Officer and such other argument as shall be presented by any party to the proceeding, the Retirement Board shall vote on the recommendation of the Hearing Officer.

2. In the event of a tie vote of a quorum present and voting on a contested matter, the matter will automatically be placed on the agenda of the next Retirement Board meeting.

In the event of a tie vote of a quorum present and voting on a contested matter rescheduled from a prior meeting, the Retirement Board may vote to postpone and re-consider the matter at a subsequent hearing, when a larger number of voting members may be present. If no such vote to postpone and re-consider is taken, or if a vote to postpone and re-consider the matter at a later date fails, the underlying action appealed from will be deemed affirmed

K. Requests for Rehearing

1. A request for rehearing which is submitted prior to the issuance of the Hearing Officer's recommendation should be made in writing. The request must detail the substance of any additional evidence to be offered, and the reason for the failure of the party to offer it at the prior proceedings.
2. A rehearing will be denied if the evidence does not bear on any issue in contest in the original proceedings, will not likely affect the final recommendation, or if the request appears to be merely for purposes of delaying a final decision. A second request for rehearing after the granting or denial of a prior request for rehearing will not be permitted.

~~1.5 Rules of Elections to Employees Retirement Board~~

~~1.5.1 Regular Elections~~

~~A. Date of Election.~~

- ~~1. Regular elections will be held in the January preceding the expiration of the elected members' term of office.~~

~~B. Notice of Election.~~

- ~~1. A notice of intent to hold elections to seat members of the state employees, teacher, municipal employee and retiree groups shall be sent by regular mail to each member of the system by September 15th of the year preceding the election. Additional notices will be made available for posting in various state and municipal agencies, schools, and related public offices. Each such mailing shall be made to the last known address of the member, as provided by the member's employer or the member's data file at the retirement system.~~

~~C. Eligibility to Vote and Candidacy.~~

EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND

DAVID C. JENCKS, Jr.
Petitioner

VS.

EMPLOYEES' RETIREMENT SYSTEM:
OF RHODE ISLAND,
Respondent

:
:
:
:
:
:
:
:

DECISION

This petition was filed by David C. Jencks, Jr. ("Petitioner") challenging the September 13, 2017 decision by the Employees' Retirement System of Rhode Island (hereinafter "Retirement System" or "Respondent") to grant Petitioner a 50% disability pension pursuant to R.I. Gen. Laws § 36-10-15(b). Petitioner submitted a position statement with exhibits on February 6, 2018. The parties submitted a joint stipulation of facts (the "Stipulation of Facts") and joint exhibits on or about May 14, 2018. Subsequent to this stipulation, Petitioner submitted a memorandum of law on June 20, 2018, and Respondent submitted a response memorandum on July 16, 2018. Petitioner's counsel indicated on July 23, 2018 that Petitioner would not submit a reply memorandum. Both parties relied upon their respective filings and waived an evidentiary hearing. The positions of the parties being sufficiently presented in the briefs and papers received and the relevant facts having been stipulated to, this matter is now ready for decision.

Factual and Procedural History

The following exhibits were introduced:

*Joint Exhibits*¹

1. Petitioner's Membership Application to the Retirement System dated January 29, 2004.
2. Petitioner's Application for Accidental Disability Retirement dated August 30, 2016.

¹ Insofar as any exhibit was first submitted as a particular party's exhibit, and was later resubmitted as a joint exhibit, this Decision will treat that exhibit as a joint exhibit.

3. Incident/Injury Report Form Dated April 23, 2015.
4. Correspondence from Petitioner's Counsel to Retirement System Counsel dated September 28, 2016.
5. Retirement System Award of 50% Disability dated September 15, 2017
6. Appeal and Request for Hearing by Petitioner dated October 5, 2017.
7. Hearing Officer Assignment Form dated November 15, 2017.

Petitioner's Exhibits²

1. Petitioner's Memorandum of Agreement for Workers' Compensation dated August 21, 2016.
2. Letter to Petitioner from the Military Staff Office of the Adjutant General dated September 13, 2016.

The facts in this case have been stipulated to; those facts are set forth below:³

1. Petitioner became a member of the Employees' Retirement System of the State of Rhode Island on or about January 2004, upon becoming employed as a Quonset Firefighter with the Executive Military Staff of the State of Rhode Island. His membership application is dated January 29, 2004, and indicates with respect to his employee status that he is a "state employee." Joint Exh. 1.

2. Petitioner submitted an Application for Accidental Disability Retirement for State Employees/Teachers on August 30, 2016, with the stated medical reason for disability being:

[REDACTED] which he alleged occurred on April 19, 2015 [REDACTED]

[REDACTED] Joint Exhs. 2, 3.

3. At the time he filed his disability pension application, Petitioner was receiving Injured on Duty benefits pursuant to the provisions of R.I. Gen. Laws § 45-19-1.

² Both Petitioner and Respondent submitted various statutes and cases as exhibits. These are not included in this list.
³ References to Exhibits have been modified to reflect the exhibit list above rather than the exhibit designations used in the Stipulation of Facts.

4. On September 28, 2016, counsel for Petitioner sent a letter to counsel for ERSRI, arguing that Petitioner was entitled to have his disability pension application processed under the provisions of R.I. Gen. Laws § 45-21.2-9. Joint Exh. 4.
5. In connection with his application, Petitioner was evaluated by three independent medical examiners: Dr. Kenneth Catalozzi, Dr. John Goldberg, and Dr. Kenneth Morrissey.
6. On September 13, 2017, the Retirement Board, acting upon the recommendation of its Disability Subcommittee, voted to approve Petitioner's application for an accidental disability pension at the 50% benefit level, pursuant to the provisions of R.I. Gen. Laws § 36-10-15(b). The Disability Subcommittee found Petitioner to be permanently and totally disabled from service, but not permanently and totally disabled from any employment consistent with R.I. Gen. Laws §§ 36-10-15(c) and 28-33-17(b). Joint Exh. 5.
7. On October 5, 2017, counsel for Petitioner sent a letter to the Executive Director of ERSRI, Frank J. Karpinski, requesting an appeal/reconsideration hearing in accordance with ERSRI's applicable regulations. Joint Exh. 6. This letter reiterated Petitioner's claim that he is entitled to have his application processed under the provisions of R.I. Gen. Laws § 45-21.2-9, with the differing benefits and procedural remedies associated therewith.
8. At the November 3, 2017 Disability Subcommittee meeting, the Subcommittee voted to refer the legal challenge raised by Petitioner regarding the statutory framework for processing of his disability pension application, to an independent Hearing Officer for a recommendation to the Retirement Board. The matter was thereafter assigned to the instant Hearing Officer. Joint Exh. 7.
9. At all relevant times, Petitioner's employee and employer contributions were paid and processed by ERSRI in accordance with the provisions of R.I. Gen. Laws §§ 36-10-1, 36-10-

1.1, and 36-10-2, in connection with ERSRI's administration of the retirement system established in R.I. Gen. Laws § 36-8-2.

10. At no time has Petitioner contributed, nor have employer contributions been received, in accordance with the provisions of R.I. Gen. Laws § 45-21.2-14, to the plans established in R.I. Gen. Laws §§ 45-21-32 and 45-21.2-3.

Though the above-enumerated facts are the entirety of the facts stipulated to in this case, there is no dispute at this time that Petitioner was injured on or about April 19, 2015, while on duty in his position as a state firefighter, when Petitioner [REDACTED]

Discussion

The Petitioner and the Retirement System dispute whether the fact that Petitioner was a state firefighter means he is entitled to a retirement benefit based upon the terms and conditions laid out in R.I. Gen. Laws § 45-21.2-1 *et seq.* Petitioner appears to make the argument that because § 45-19-1 governs injured-on-duty benefits for all firefighters – municipal as well as state – this extends eligibility to all recipients to the retirement program under R.I. Gen. Laws § 45-21.2-1 *et seq.* Additionally, he makes reference to R.I. Gen. Laws § 45-19-1(j)(2), which provides that

A person who so applies shall continue to receive injured on duty payments, and the right to continue to receive IOD payments of a person who so applies shall terminate in the event of a final ruling of the workers compensation court allowing accidental disability benefits. Nothing herein shall be construed to limit or alter any and all rights of the parties with respect to independent medical examination or otherwise, as set forth in the applicable collective bargaining agreement.

Petitioner argues that because this statute provides that injured-on-duty payments shall continue until a ruling by the Workers' Compensation Court, Petitioner's application should be processed

in accordance with Title 45, rather than Title 36. Finally, Petitioner makes reference to R.I. Gen. Laws § 45-21.2-9(e)⁴, which reads as follows:

Any fire fighter, including one employed by the state, or a municipal firefighter employed by a municipality that participates in the optional retirement for police officers and fire fighters as provided in this chapter, who is unable to perform his or her duties in the fire department by reason of a disabling occupational cancer that develops or manifests itself during a period while the fire fighter is in the service of the department, and any retired member of the fire force of any city or town who develops occupational cancer, is entitled to receive an occupational cancer disability and he or she is entitled to all of the benefits provided for in this chapter, chapters 19, 19.1, and 21 of this title and chapter 10 of title 36 if the fire fighter is employed by the state.

Petitioner takes the fact that this provision of § 45-21.2-9 includes state-employed firefighters to mean that state-employed firefighters are intended to partake in all of the provisions of § 45-21-2-1 *et seq.*

By contrast, the Retirement System points out the specific program Petitioner wishes to join is administered by the Municipal Employees' Retirement System ("MERS") rather than the Retirement System. The Retirement System also notes that Petitioner is a member of the Retirement System, not of MERS. Additionally, all of Petitioner's previous contributions have been processed in accordance with Title 36, rather than Title 45, which the Retirement System argues also means that Petitioner is only entitled to receive a retirement pension in accordance with Title 36. Finally, the Retirement System takes the position that Petitioner is claiming a right to appeal to the Workers' Compensation Court which runs contrary to the intent of what is admittedly an ambiguously-worded statute.

In this case, Petitioner has admitted to having joined the Retirement System and has admitted that his contributions were processed in accordance with Title 36. While it is true that

⁴ References in Petitioner's Memorandum and Position Statement are to § 45-21.1-9(e). As this section does not exist, but § 45-21.2-9(e) does and contains language corresponding to Petitioner's references, this decision will presume that Petitioner's reference was a typographical error.

R.I. Gen. Laws § 45-19-1 creates common rules for *injured-on-duty payments* for all state and municipal firefighters, it is also clear that the retirement provisions under § 45-21.2-1 *et seq.* are limited by their own terms to *members*, who are themselves by definition municipal employees. R.I. Gen. Laws § 45-21.2-9 states that “[a]ny member in active service, regardless of length of service, is entitled to an accidental disability retirement allowance.” Membership is defined in R.I. Gen. Laws § 45-21-8⁵ as requiring one to be an employee “of a participating municipality.” Therefore, one’s status as a municipal employee is presupposed as a condition of obtaining a retirement under the provisions of R.I. Gen. Laws § 45-21.2-1 *et seq.* It follows that as a non-member, Petitioner cannot be paid out of a pension which, by statute, is extended only to “[a]ny member in active service.” R.I. Gen. Laws § 45-21.2-9(a)

Petitioner raises R.I. Gen. Laws § 45-21.2-9(e) as an example of a provision which explicitly provides for municipal and state firefighters. However this provision is limited by its terms to municipal and state firefighters who become disabled due to an occupational cancer. *See also E. Providence v. Int’l Ass’n of Firefighters*, 982 A. 2d 1281, 1288 (R.I. 2009) (finding that statute, referred to as “Cancer Benefits for Firefighters statute,” was enacted to protect all firefighters who became afflicted with occupational cancers). Therefore, this reference cannot be one of general applicability. If anything, the inclusion of the terms “[a]ny firefighter, including one employed by the state” to the terms of R.I. Gen. Laws § 45-21.2-9(e) brings into focus their exclusion elsewhere. The Rhode Island Supreme Court has applied the maxim *expressio unius est exclusio alterius* (literally: the expression of one excludes the others) in circumstances where legislative enactments specify only parts of a whole to limit the effect of the enactment to those specified parts. *See Ryan v. Providence*, 11 A.3d 68, 75 (R.I. 2011) (applying maxim to limit

⁵ R.I. Gen. Laws § 45-21.2-2 defers to the definitions in § 45-21-2, which in turn states that members are defined per the provisions of R.I. Gen. Laws § 45-21-8.

effect of Providence honorable services ordinance to only those crimes listed in ordinance). Here, the fact that the most expansive terminology “[a]ny firefighter,” and the additional inclusion of “including one employed by the state” exist only at R.I. Gen. Laws § 45-21.2-9(e) throws into relief the fact that state firefighters are nowhere else explicitly included.

Finally, Petitioner’s reference to an appeal right to the Workers’ Compensation Court under R.I. Gen. Laws § 45-19-1(j)(2) is unavailing. This section, in conjunction with the rest of R.I. Gen. Laws § 45-19-1(j), does contain an ambiguity, as it is not entirely clear what the role of the Workers’ Compensation Court would be once an individual’s application is granted. When interpreting an ambiguous statute, a hearing officer must “give effect to the purpose of the act as intended by the Legislature.” *Mendes v. Factor*, 41 A.3d 994, 1002 (R.I. 2012) (quoting *D’Amico v. Johnston Partners*, 866 A.2d 1222, 1224 (R.I.2005)). This means a hearing officer must “consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections.” *Id.* (quoting *Sorenson v. Colibri Corp.*, 650 A.2d 125, 128 (R.I.1994)).

In this case, R.I. Gen. Laws § 45-19-1(j) seems to spell out a set of procedures to be undertaken by individuals receiving injured-on-duty payments who become disabled: such individuals must apply for retirement benefits within a set amount of time (as provided by § 45-19-1(j)), after which their payments will terminate (§ 45-19-1(j)(1)), unless they *have* applied in which case their injured-on-duty status shall continue pending receipt of retirement benefits or a final adjudication by the Workers’ Compensation Court (§ 45-19-1(j)(2)). This interpretation requires reading into R.I. Gen. Laws § 45-19-1(j)(2) an implied cut-off of injured-on-duty payments at the first of either the time of a grant of retirement benefits or a final ruling by the Workers’ Compensation Court regarding one’s injuries and continued status as injured-on-duty.

However, such an interpretation follows from the statute—the alternative seems to be that injured-on-duty benefits would continue indefinitely for individuals who also receive retirement benefits until and unless the Workers' Compensation Court issues a final ruling, truly a ridiculous result. In this case, Petitioner's entitlement to injured-on-duty payments has been cut off by his successful application for benefits from the Retirement System. He is not entitled to review by the Workers' Compensation Court on the question of whether his benefits should stem from Title 36 or Title 45. Thus, nothing about R.I. Gen. Laws § 45-19-1(j)(2) can salvage Petitioner's claim for a retirement benefit under the terms of Title 45.

Conclusion

Petitioner was a state firefighter who was injured on duty and received injured-on-duty benefits pursuant to R.I. Gen. Laws § 45-19-1. Throughout his career, he was a member of the Retirement System, and made contributions – directly and through his employer – to the Retirement System as a member of the Retirement System, not of MERS. As a result, the retirement benefits he is now entitled to must necessarily be pursuant to this membership, and must be administered per the terms of R.I. Gen. Laws § 36-10-1 *et seq.* and all other applicable sections of Title 36.



Raymond A. Marcaccio, Hearing Officer

Dated: September 28, 2018

COPY

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

**EMPLOYEES' RETIREMENT SYSTEM OF
THE STATE OF RHODE ISLAND**

In re:

DAVID C. JENCKS, JR.

**Before Hearing Officer
Raymond Marcaccio, Esq.**

STIPULATION OF FACTS

It is hereby agreed that the following facts are stipulated to by the parties for purposes of the administrative challenge brought by David C. Jencks, Jr. ("Jencks"):

1. Jencks became a member of the Employees' Retirement System of the State of Rhode Island in or about January of 2004, upon becoming employed as a Quonset Firefighter with the Executive Military Staff of the State of Rhode Island. His membership application is dated January 29, 2004, and indicates with respect to his employee status that he is a "state employee". See attached Exhibit A.
2. Jencks submitted an Application for Accidental Disability Retirement for State Employees/Teachers on August 30, 2016, with the stated medical reason for disability being: [REDACTED] which he alleged occurred on April 19, 2015. [REDACTED] See Disability Retirement Application, attached hereto as Exhibit B, and Incident/Injury Report form, attached hereto as Exhibit C.
3. At the time he filed his disability pension application, Jencks was receiving Injured on Duty benefits pursuant to the provisions of R.I.G.L. §45-19-1.
4. On September 28, 2016, counsel for Jencks sent a letter to counsel for ERSRI, arguing that Jencks was entitled to have his disability pension application processed under the provisions of R.I.G.L. §45-21.2-9. See attached Exhibit D.
5. In connection with his application, Jencks was evaluated by three independent medical examiners: [REDACTED]
6. On September 13, 2017, the Retirement Board, acting upon the recommendation of its Disability Subcommittee, voted to approve Jencks' application for an accidental

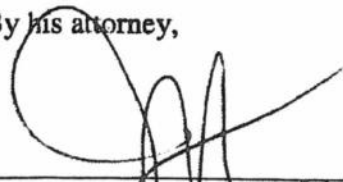
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disability pension at the 50% benefit level, pursuant to the provisions of R.I.G.L. §36-10-15(b). The Disability Subcommittee found Jencks to be permanently and totally disabled from service, but not permanently and totally disabled from any employment consistent with R.I.G.L. §36-10-15(c) and §28-33-17(b). See attached Exhibit E.

7. On October 5, 2017, counsel for Jencks sent a letter to the Executive Director of ERSRI, Frank J. Karpinski, requesting an appeal/reconsideration hearing in accordance with ERSRI's applicable regulations. See attached Exhibit F. This letter reiterated Jencks' claim that he is entitled to have his application processed under the provisions of R.I.G.L. §45-21.2-9, with the differing benefits and procedural remedies associated therewith.
8. At the November 3, 2017 Disability Subcommittee meeting, the Subcommittee voted to refer the legal challenge raised by Jencks regarding the statutory framework for processing of his disability pension application, to an independent Hearing Officer for a recommendation to the Retirement Board. The matter was thereafter assigned to the instant Hearing Officer. See attached Exhibit G.
9. At all relevant times, Jencks' employee and employer contributions were paid and processed by ERSRI in accordance with the provisions of R.I.G.L. §§36-10-1, 36-10-1.1, and 36-10-2, in connection with ERSRI's administration of the retirement system established in R.I.G.L. §36-8-2.
10. At no time has Jencks contributed, nor have employer contributions been received, in accordance with the provisions of R.I.G.L. §45-21.2-14, to the plans established in R.I.G.L. §§45-21-32 and 45-21.2-3.

David C. Jencks

By his attorney,



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firefighters.

Facts and Travel

The facts in this case are largely undisputed. Chief Moniz, a thirty-year veteran of the East Providence Fire Department, was diagnosed with prostate cancer in August 2002. As a result of his diagnosis, Chief Moniz underwent surgery and treatment while on sick leave from August 22, 2002, until November 18, 2002, after which he returned to active duty. Upon returning to active duty, Chief Moniz wrote to the chief of the East Providence Fire Department requesting that the forty-four duty days of which he was absent receiving cancer treatment be converted to "injured on duty" time. By requesting that his sick leave be converted to injured on-duty time, Chief Moniz sought to have the forty-four days of sick leave credited back to his sick leave reserve.^[1] Under Article X, Section 10.02 of the collective-bargaining agreement between the City of East Providence and Local 850, "In-line-of-duty illness" time shall be in conformity with G.L. 1956 § 45-19-1 (IOD statute). The relevant provisions of the parties' collective-bargaining agreement are as follows:

" 10.03 IN-LINE-OF-DUTY INJURY " (A) Members of the fire department, covered by this contract who are injured in the line of duty including non-civic details to which they are assigned, shall receive full salary while their incapacity exists or until they are placed on a disability retirement (This section is in conformance with General Laws of Rhode Island, 1956, as amended, Section 45-19-1)."

In his request letter to the chief of the department, Chief Moniz referenced two other firefighters who had also been diagnosed with cancer and "had their sick leave time converted to injured on-duty time prior to their retirement from active duty." Those two firefighters, however, did not return to active duty following

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their cancer diagnoses, and both retired from the East Providence Fire Department while on sick leave. The department chief denied Chief Moniz's request, and the union filed a grievance pursuant to the collective-bargaining agreement. The human resources director denied Chief Moniz's grievance, in part because he was able to return to active duty, whereas other firefighters' cancer diagnoses resulted in their disability retirements.^[2] In his letter denying Chief Moniz's request, the human resources director acknowledged that:

" It is the City's policy to evaluate each request that cancer be presumed to be work related on a case-by-case basis. In the past, the City has ruled in two cases, based on the type of cancer and the fact that the cancer led directly to disability retirements, that the sick leave taken immediately prior to the disability pension should be converted to injury on duty leave. In your case, based on the type of cancer and the fact that you have recovered sufficiently to return to active duty, it is the City's position that your sick leave not be converted to injured on duty status."

After the city denied Chief Moniz's grievance, Local 850 submitted the grievance to arbitration on Chief Moniz's behalf pursuant to Article XVI of the parties' collective-bargaining agreement. At the arbitration hearing, the city argued that its firefighters were not entitled to benefits under the "Cancer Benefits for Fire Fighters" statute because it applied only to municipalities participating in the optional retirement plan under G.L. 1956 chapter 21 of title 45. Local 850 argued that the "Cancer Benefits for Fire Fighters" statute was incorporated into the parties' collective-bargaining agreement through the adoption of § 45-19-1.^[3] Local 850 argues, in the alternative, that the city's previous grant of the cancer benefit to two of its firefighters constituted a past practice, entitling Chief Moniz to benefits under the "Cancer Benefits for Fire Fighters" statute.

On December 9, 2004, the arbitrator issued a decision in favor of Local 850, and awarded Chief Moniz forty-four days of sick leave back to his reserve. In his decision, the arbitrator concluded that the parties had incorporated the IOD statute into the collective-bargaining agreement. He further found that, by enacting the "Cancer Benefits for Fire Fighters" statute, the General Assembly amended the IOD statute to include cancer as an occupational injury for Rhode Island firefighters. In the alternative, the arbitrator found that any ambiguity regarding the applicability of the "Cancer Benefits for Fire Fighters" statute to the collective-bargaining agreement should be resolved by looking at the parties' prior application of the contract language. In doing so, the arbitrator found that the city had provided benefits through the "Cancer Benefits for Fire Fighters" statute to two other firefighters.

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The arbitrator used these two prior applications to determine that the parties had intended to incorporate the "Cancer Benefits for Fire Fighters" statute into the agreement.

After the arbitrator filed his award, the city filed a motion to vacate the award in Superior Court. The hearing justice determined that the arbitrator had "appropriately assessed the collective-bargaining agreement and state statutes and made appropriate findings of fact and conclusions of law." Accordingly, on May 12, 2006, the hearing justice denied the City's motion to vacate, from which it timely appealed.

II

Analysis

On appeal, the city argues that the arbitrator exceeded his authority by finding that the "Cancer Benefits for Fire Fighters" statute applied to its firefighters because (1) the city had established its own retirement system pursuant to P.L. 1925, ch. 715, and therefore was exempt from the provisions of the "Cancer Benefits for Fire Fighters" statute; (2) that implementation of the arbitrator's award would cause irreparable harm because the city had not contemplated nor

funded the conferral of benefits under the " Cancer Benefits for Fire Fighters" statute to its firefighters; and (3) the application of the " Cancer Benefits for Fire Fighters" statute to East Providence created new injured-on-duty and pension benefits that were not the result of collective-bargaining. In response, Local 850 avers that the parties incorporated the IOD statute into their collective-bargaining agreement, that the " Cancer Benefits for Fire Fighters" statute amended the IOD statute, and that the plain language of the " Cancer Benefits for Fire Fighters" statute applies to all Rhode Island firefighters.

A

Standard of Review

" The authority of the courts in this jurisdiction to review an arbitral award is statutorily prescribed and is limited in nature." *North Providence School Committee v. North Providence Federation of Teachers, Local 920, American Federation of Teachers*, 945 A.2d 339, 344 (R.I.2008). Public policy favors the finality of arbitration awards, and such awards enjoy a presumption of validity. *Pierce v. Rhode Island Hospital*, 875 A.2d 424, 426 (R.I.2005). "[A]s long as an arbitrator's award ' draws its essence' from the contract and is based upon a ' passably plausible' interpretation of the contract, it is within the arbitrator's authority and our review must end." *Town of Coventry v. Turco*, 574 A.2d 143, 146 (R.I.1990) (quoting *Jacinto v. Egan*, 120 R.I. 907, 912, 391 A.2d 1173, 1176 (1978)).

It is well settled that an arbitrator may " make rulings concerning the applicable law and * * * interpret the law according to the facts before him or her." *Vose v. Rhode Island Brotherhood of Correctional Officers*, 587 A.2d 913, 914 (R.I.1991). "[L]ike a judge sitting without a jury, an arbitrator is called upon not only to make findings of fact but also to apply the law to the facts." *Id.* Not only may an arbitrator make rulings on the applicable law, but an arbitrator's award will be upheld even if he or she makes a mistake or error in interpreting the law. *Pier House Inn. Inc. v. 421 Corporation. Inc.*, 812 A.2d 799, 803 (R.I.2002). "[A]rbitrators may and should decide questions of relevant state law and the interpretation thereof in resolving a grievance brought pursuant [to] a [collective-bargaining agreement]." *Rhode Island Brotherhood of Correctional Officers v. State*, 643 A.2d 817, 821 (R.I.1994).

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This Court will overturn an arbitration award only " if the award was irrational or if the arbitrator manifestly disregarded the law." *Purvis Systems, Inc. v. American Systems Corp.*, 788 A.2d 1112, 1115 (R.I.2002). "[A] manifest disregard of the law requires ' something beyond and different from a mere error in the law or failure on the part of the arbitrators to understand or apply the law.' " *North Providence School Committee*, 945 A.2d at 344 (quoting *Westminster Construction Corp. v. PPG Industries, Inc.*, 119 R.I. 205, 211, 376 A.2d 708, 711 (1977)). Rather, "[a] manifest disregard of the law occurs when an arbitrator understands and correctly articulates

the law, but then proceeds to disregard it." *Id.* (citing *Purvis Systems, Inc.*, 788 A.2d at 1115).

The city contends that the arbitrator exceeded his authority by construing the " Cancer Benefits for Fire Fighters" statute to be an amendment to the IOD statute. This argument ignores this Court's precedent that, in resolving grievances among parties to a collective-bargaining agreement, an arbitrator should decide questions of state law. *Rhode Island Brotherhood of Correctional Officers*, 643 A.2d at 821. First, it would be impossible for the arbitrator to resolve the dispute without looking to the " Cancer Benefits for Fire Fighters" statute because its application to East Providence firefighters is the central issue. Additionally, the parties' dispute also was based on whether Chief Moniz was entitled to injured on-duty sick time under the IOD statute, incorporated in Article X, Section 10.02 of the parties' collective-bargaining agreement. Thus, the arbitrator clearly was within his authority to review and interpret the relevant state law because the application of it was essential in resolving the parties' dispute.

Next, the city argues that the arbitrator's award was irrational because conferring IOD benefits on firefighters diagnosed with cancer would cause the city irreparable fiscal harm. This argument is not persuasive. First, the " Cancer Benefits for Fire Fighters" statute specifically provides benefits under the IOD statute to cancer-stricken firefighters. Next, the parties collectively bargained for the benefits of the IOD statute. Finally, this Court has held that parties cannot waive the benefits under the IOD statute in the collective-bargaining process. See *Town of Burrillville v. Rhode Island State Labor Relations Board*, 921 A.2d 113, 121 n. 6 (R.I.2007) (citing *Vose*, 587 A.2d at 915). Therefore, the city's assertion that providing IOD benefits for cancer-stricken firefighters would cause irreparable harm is implausible, considering that the city not only was contractually, but statutorily, obligated to provide benefits to its firefighters who suffer on-duty injuries. Cancer, under the " Cancer Benefits for Fire Fighters" statute, is simply a type of on-duty injury for which firefighters are to be paid IOD benefits, along with the many other on-duty injuries that firefighters can suffer in the performance of their jobs. Thus, any argument that providing IOD benefits would cause the city irreparable fiscal harm is not persuasive.

B

Application of G.L. 1956 Chapter 19.1 of Title 45

The city argues that the language of the " Cancer Benefits for Fire Fighters" statute limits its application to " a municipality that participates in the optional retirement plan for police officers and fire fighters provided in [45-21.2]" and that, because the city does not participate in the optional retirement program, its firefighters are not entitled to benefits under the provisions of the " Cancer Benefits for Fire Fighters" statute. Local 850 contends

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that the language, " any fire fighter" within the " Cancer Benefits for Fire Fighters" statute should

be construed to include any firefighter in any city or town regardless of whether that city or town participates in the optional retirement program. Section 45-19.1-1, entitled " Legislative findings," provides:

" (a) The general assembly finds and declares that by reason of their employment: " (1) Fire fighters are required to work in the midst of, and are subject to, smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances; " (2) Fire fighters are continually exposed to a vast and expanding field of hazardous substances through hazardous waste sites and the transportation of those substances; " (3) Fire fighters are constantly entering uncontrolled environments to save lives and reduce property damage and are frequently not aware of potential toxic and carcinogenic substances that they may be exposed to; " (4) Fire fighters, unlike other workers, are often exposed simultaneously to multiple carcinogens, and the rise in occupational cancer among fire fighters can be related to the rapid proliferation of thousands of toxic substances in our every day environment; and " (5) The onset of cancers in fire fighters can develop very slowly, usually manifesting themselves from five (5) years to forty (40) years after exposure to the cancer-causing agent. " (b) The general assembly further finds and declares that all of the previously stated conditions exist and arise out of or in the course of that employment."

Section 45-19.1-2 entitled, " Definitions," provides:

" The following terms when used in this chapter have the following meanings: " (a) ' Disability' means a condition of physical incapacity to perform any assigned duty or duties in the fire department. " (b) ' Fire department' means service groups (paid or volunteer) that are organized and trained for the prevention and control of loss of life and property from any fire or disaster. " (c) ' Fire fighter' means an individual, paid or volunteer, who is assigned to a fire department and is required to respond to alarms and performs emergency action. " (d) ' Occupational cancer' means a cancer arising out of his or her employment as a fire fighter, due to injury from exposures to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty in the fire department."

Section 45-19.1-3 entitled, " Occupational cancer disability for fire fighters," provides:

" (a) Any fire fighter, including one employed by the state, or a municipal fire fighter employed by a municipality that participates in the optional retirement for police officers and fire fighters, as provided in chapter 21.2 of this title, who is unable to perform his or her duties in the fire department by reason of a disabling occupational cancer which develops or manifests itself during a period while the fire fighter is in the service of the department, and any retired member of the fire department of any city or town who develops occupational cancer, is entitled to receive an occupational cancer disability, and he or she is entitled to all of the benefits provided for in chapters 19, 21 and 21.2 of this title and chapter 10 of title 36 if the fire fighter is employed by the state. " (b) The provisions of this section apply retroactively in the case of any retired

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member of the fire department of any city or town."

" It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I.1996);

see also *State v. Greenberg*, 951 A.2d 481, 489 (R.I.2008). " The plain meaning of the statute is the best indication of the General Assembly's intent." *Park v. Rizzo Ford, Inc.*, 893 A.2d 216, 221 (R.I.2006). Therefore, " when a statute is unambiguous on its face we do not search behind the language to determine legislative intent." *Angell v. Union Fire District of South Kingstown*, 935 A.2d 943, 946 (R.I.2007). It is only when a statute is ambiguous and susceptible to more than one interpretation does this Court have the responsibility to " glean the intent and purpose of the Legislature ' from a consideration of the entire statute, keeping in mind [the] nature, object, language, and arrangement' of the provision to be construed." *Algieri v. Fox*, 122 R.I. 55, 58, 404 A.2d 72, 74 (1979).

Upon a reading of the statute, it is evident that the General Assembly intended to ensure that firefighters diagnosed with cancer receive injured on-duty benefits in accordance with the IOD statute, § 45-19-1, the Retirement of Municipal Employees statute, chapter 21 of title 45, the Optional Retirement for Members of Police Force and Fire Fighters statute, G.L. 1956 chapter 21.2 of title 45, and the Retirement System-Contributions and Benefits statute, G.L. 1956 chapter 10 of title 36. The enactment of the " Cancer Benefits for Fire Fighters" statute specifically designated cancer among firefighters as an on-duty illness, based on the General Assembly's findings that firefighters are exposed to " a vast and expanding field of hazardous substances" and that the " rise in occupational cancer among fire fighters can be related to the rapid proliferation of thousands of toxic substances." Section 45-19.1-1(a)(3)-(4). Simply put, the " Cancer Benefits for Fire Fighters" statute acknowledges the unfortunate fact that in the performance of their duties, firefighters develop cancer at a disproportionate rate, and provides a partial remedy by entitling them to " all of the benefits provided for in chapters 19, 21 and 21.2 of this title and chapter 10 of title 36." Section 45-19.1-3(a).

The city's argument that the General Assembly intended to restrict the " Cancer Benefits for Fire Fighters" statute to firefighters participating in the municipal retirement system is inconsistent with the express language of the statute. Nothing in § 45-19.1-3 restricts the statute's application to firefighters participating in the optional retirement plan. Indeed, the statute uses the all inclusive phrase, " any fire fighter." We find no merit in the city's contention that the statutory language, " including [a firefighter] employed by the state, or a municipal fire fighter employed by a municipality that participates in the optional retirement for police officers and fire fighters," limits its application. The word, " any," followed by the term, " including," is all encompassing. This language does not indicate any intent on the part of the General Assembly to restrict these cancer benefits to only certain firefighters. Had the General Assembly intended to limit the statute's application to municipal firefighters participating in the optional retirement program, it could have done so. See *Brown & Sharpe Manufacturing Co. v. Dean*, 89 R.I. 108, 116-17, 151 A.2d 354, 358 (1959) (" if the language of a statute is free from ambiguity and expresses a definite and sensible meaning, that meaning is conclusively presumed to be the one which the legislature intended"). Thus, we conclude that the language of the " Cancer

Benefits for Fire Fighters" statute expressly provides injured on-duty benefits provided by chapters 19, 21, and 21.2 of title 45, and chapter 10 of title 36.

In light of our reading of the " Cancer Benefits for Fire Fighters" statute, we conclude that the arbitrator did not exceed his authority in finding that the city is obligated to provide injured on-duty benefits to Chief Moniz. The " Cancer Benefits for Fire Fighters" statute explicitly provides injured on-duty benefits as governed by § 45-19-1 to firefighters who are diagnosed with cancer. Because of Chief Moniz's cancer diagnosis, he is entitled to have the forty-four days of sick leave at issue restored to him in accordance with § 45-19-1.

III

Conclusion

For the reasons stated in this opinion, we affirm the judgment of the Superior Court and remand the file thereto.

Notes:

[1] Chief Moniz did not seek compensation from the city because he was paid his usual salary while on leave pursuant to the sick leave provision, Article X, Section 10.02 of the collective-bargaining agreement between the city and Local 850. Therefore, the only issue before this Court is whether Chief Moniz's leave for treatment of his prostate cancer should have been deducted from his sick leave reserve or whether that time should have been restored because his leave fell within the ambit of G.L. 1956 § 45-19-1.3.

[2] We commend Chief Moniz for returning to active duty after battling cancer, and for his continuing service to the East Providence community, when he could have retired. In effect, in so doing, he saved the city from incurring expenses related to the chief's retirement, as well as hiring a replacement for him.

[3] Section 45-19-1(a) reads in relevant part:

" Whenever any * * * fire fighter * * * of any city, town, fire district, or the state of Rhode Island is wholly or partially incapacitated by reason of injuries received or sickness contracted in the performance of his or her duties * * * the respective city, town, fire district, state of Rhode Island or Rhode Island Airport Corporation by which the * * * fire fighter * * * is employed, shall during the period of the incapacity, pay the * * * fire fighter * * * the salary or wage and benefits to which the * * * fire fighter * * * would be entitled had he or she not been incapacitated * * *."

TITLE 45

Towns and cities

CHAPTER 45-21.2

Optional Retirement for Members of Police Force and Fire Fighters

SECTION 45-21.2-9

§ 45-21.2-9 Retirement for accidental disability.

(a) Any member in active service, regardless of length of service, is entitled to an accidental disability retirement allowance. Application for the allowance is made by the member or on the member's behalf, stating that the member is physically or mentally incapacitated for further service as the result of an injury sustained while in the performance of duty and certifying to the time, place, and conditions of the duty performed by the member which resulted in the alleged disability and that the alleged disability was not the result of the willful negligence or misconduct on the part of the member, and was not the result of age or length of service, and that the member has not attained the age of sixty-five (65). The application shall be made within eighteen (18) months of the alleged accident from which the injury has resulted in the member's present disability and shall be accompanied by an accident report and a physician's report certifying to the disability. If the member was able to return to his or her employment and subsequently reinjures or aggravates the same injury, the member shall make another application within eighteen (18) months of the reinjury or aggravation which shall be accompanied by a physician's report certifying to the reinjury or aggravation causing the disability. If a medical examination made by three (3) physicians engaged by the retirement board, and other investigations as the board may make, confirms the statements made by the member, the board may grant the member an accidental disability retirement allowance.

(b) For the purposes of subsection (a), "aggravation" shall mean an intervening work-related trauma that independently contributes to a member's original injury that amounts to more than the natural progression of the preexisting disease or condition and is not the result of age or length of service. The intervening independent trauma causing the aggravation must be an identifiable event or series of work-related events that are the proximate cause of the member's present condition of disability.

(c) "Occupational cancer", as used in this section, means a cancer arising out of employment as a fire fighter, due to injury due to exposures to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty in the fire department.

(d) For purposes of subsection (a), "reinjury" shall mean a recurrence of the original work-related injury from a specific ascertainable event. The specific event must be the proximate cause of the member's

present condition of disability.

- (e) Any fire fighter, including one employed by the state, or a municipal firefighter employed by a municipality that participates in the optional retirement for police officers and fire fighters as provided in this chapter, who is unable to perform his or her duties in the fire department by reason of a disabling occupational cancer which develops or manifests itself during a period while the fire fighter is in the service of the department, and any retired member of the fire force of any city or town who develops occupational cancer, is entitled to receive an occupational cancer disability and he or she is entitled to all of the benefits provided for in this chapter, chapters 19, 19.1, and 21 of this title and chapter 10 of title 36 if the fire fighter is employed by the state.
- (f) In the event that any party is aggrieved by the determination of the retirement board pursuant to § 45-19-1, for an injury occurring on or after July 1, 2011, the party may submit an appeal to the Rhode Island workers' compensation court. The appellant shall file a notice of appeal with the retirement board and with the workers' compensation court within twenty (20) days of the entry of the retirement board's decision and shall serve a copy of the notice of appeal upon the opposing party.
- (g) Within twenty (20) days of the receipt of the notice of appeal, the retirement board shall transmit the entire record of proceedings before it, together with its order, to the workers' compensation court.
- (h) In the event that a party files a notice of appeal to the workers' compensation court, the order of the retirement board shall be stayed pending further action by the court pursuant to the provisions of Rhode Island general law § 28-35-20.
- (i) Upon receipt of the notice of appeal, the court shall assign the matter to a judge and shall issue a notice at the time advising the parties of the judge to whom the case has been assigned and the date for pretrial conference in accordance with Rhode Island general law § 28-35-20.
- (j) All proceedings filed with the workers' compensation court pursuant to this section shall be de novo and shall be subject to the provisions of chapters 29 to 38 of Title 28 for all case management procedures and dispute resolution processes, as provided under the rules of workers' compensation court. The workers' compensation court shall enter a pretrial order in accordance with subsection 28-35-20(c) which grants or denies, in whole or in part, the relief sought by the petitioner. The pretrial order shall be effective upon entry and any payments ordered by it shall be paid within fourteen (14) days of the entry of the order. Provided, however, that in the event that the retirement board files a claim for trial of the pretrial order entered by the court, the order of the court shall be stayed until a final order or decree is entered by the court. If after trial and the entry of a final decree, the court sustains the findings and orders entered in the pretrial order, the retirement board shall reimburse the municipality all benefits paid by it from the time the pretrial order was entered until the time the final decree is entered by the court. Where the matter has been heard and decided by the workers' compensation court, the court shall retain jurisdiction to review any prior orders or decrees entered by it. Such petitions to review shall be filed directly with the workers' compensation court and shall be subject to the case management and dispute resolution procedures set forth in chapters 29 through 38 of title 28 ("Labor and Labor Relations").
- (k) If the court determines that a member qualifies for accidental disability retirement, the member shall receive a retirement allowance equal to sixty-six and two-thirds percent (66 2/3%) of the rate of the

member's compensation at the date of the member's retirement, subject to the provisions of § 45-21-31.

History of Section.

(P.L. 1968, ch. 230, § 1; P.L. 1980, ch. 59, § 2; P.L. 1991, ch. 255, § 1; P.L. 2007, ch. 331, § 1; P.L. 2007, ch. 473, § 1; P.L. 2009, ch. 310, § 50; P.L. 2011, ch. 151, art. 12, § 8; P.L. 2013, ch. 283, § 1; P.L. 2013, ch. 397, § 1; P.L. 2013, ch. 445, § 9; P.L. 2013, ch. 475, § 9.)

TITLE 45

Towns and cities

CHAPTER 45-19

Relief of Injured and Deceased Fire Fighters and Police Officers

SECTION 45-19-1

§ 45-19-1 Salary payment during line of duty illness or injury.

(a) Whenever any police officer of the Rhode Island Airport Corporation or whenever any police officer, fire fighter, crash rescue crewperson, fire marshal, chief deputy fire marshal, or deputy fire marshal of any city, town, fire district, or the state of Rhode Island is wholly or partially incapacitated by reason of injuries received or sickness contracted in the performance of his or her duties or due to their rendering of emergency assistance within the physical boundaries of the state of Rhode Island at any occurrence involving the protection or rescue of human life which necessitates that they respond in a professional capacity when they would normally be considered by their employer to be officially off-duty, the respective city, town, fire district, state of Rhode Island or Rhode Island Airport Corporation by which the police officer, fire fighter, crash rescue crewperson, fire marshal, chief deputy fire marshal, or deputy fire marshal, is employed, shall, during the period of the incapacity, pay the police officer, fire fighter, crash rescue crewperson, fire marshal, chief deputy fire marshal, or deputy fire marshal, the salary or wage and benefits to which the police officer, fire fighter, crash rescue crewperson, fire marshal, chief deputy fire marshal, or deputy fire marshal, would be entitled had he or she not been incapacitated, and shall pay the medical, surgical, dental, optical, or other attendance, or treatment, nurses, and hospital services, medicines, crutches, and apparatus for the necessary period, except that if any city, town, fire district, the state of Rhode Island or Rhode Island Airport Corporation provides the police officer, fire fighter, crash rescue crewperson, fire marshal, chief deputy fire marshal, or deputy fire marshal, with insurance coverage for the related treatment, services, or equipment, then the city, town, fire district, the state of Rhode Island or Rhode Island Airport Corporation is only obligated to pay the difference between the maximum amount allowable under the insurance coverage and the actual cost of the treatment, service, or equipment. In addition, the cities, towns, fire districts, the state of Rhode Island or Rhode Island Airport Corporation shall pay all similar expenses incurred by a member who has been placed on a disability pension and suffers a recurrence of the injury or illness that dictated his or her disability retirement, subject to the provisions of subsection (j) herein.

(b) As used in this section, "police officer" means and includes any chief or other member of the police department of any city or town regularly employed at a fixed salary or wage and any deputy sheriff, member of the fugitive task force, or capitol police officer, permanent environmental police officer or criminal investigator of the department of environmental management, or airport police officer.

(c) As used in this section, "fire fighter" means and includes any chief or other member of the fire

department or rescue personnel of any city, town, or fire district, and any person employed as a member of the fire department of the town of North Smithfield, or fire department or district in any city or town.

(d) As used in this section, "crash rescue crewperson" means and includes any chief or other member of the emergency crash rescue section, division of airports, or department of transportation of the state of Rhode Island regularly employed at a fixed salary or wage.

(e) As used in this section, "fire marshal," "chief deputy fire marshal", and "deputy fire marshal" mean and include the fire marshal, chief deputy fire marshal, and deputy fire marshals regularly employed by the state of Rhode Island pursuant to the provisions of chapter 28.2 of title 23.

(f) Any person employed by the state of Rhode Island, except for sworn employees of the Rhode Island State Police, who is otherwise entitled to the benefits of chapter 19 of this title shall be subject to the provisions of chapters 29 – 38 of title 28 for all case management procedures and dispute resolution for all benefits.

(g) In order to receive the benefits provided for under this section, a police officer or firefighter must prove to their employer that he or she had reasonable grounds to believe that there was an emergency which required an immediate need for their assistance for the protection or rescue of human life.

(h) Any claims to the benefits provided for under this section resulting from the rendering of emergency assistance in the state of Rhode Island at any occurrence involving the protection or rescue of human life while off-duty, shall first require those covered by this section to submit a sworn declaration to their employer attesting to the date, time, place and nature of the event involving the protection or rescue of human life causing the professional assistance to be rendered and the cause and nature of any injuries sustained in the protection or rescue of human life. Sworn declarations shall also be required from any available witness to the alleged emergency involving the protection or rescue of human life.

(i) All declarations required under this section shall contain the following language:

"Under penalty of perjury, I declare and affirm that I have examined this declaration, including any accompanying schedules and statements, and that all statements contained herein are true and correct."

(j) Any person receiving injured on-duty benefits pursuant to this section, and subject to the jurisdiction of the state retirement board for accidental retirement disability, for an injury occurring on or after July 1, 2011, shall apply for an accidental disability retirement allowance from the state retirement board not later than the later of eighteen (18) months after the date of the person's injury that resulted in said person's injured on duty status or sixty (60) days from the date on which the treating physician certifies that the person has reached maximum medical improvement. Nothing herein shall be construed to limit or alter any and all rights of the parties with respect to independent medical examination or otherwise, as set forth in the applicable collective bargaining agreement. Notwithstanding the forgoing, any person receiving injured on duty benefits as the result of a static and incapacitating injury whose permanent nature is readily obvious and ascertainable shall be required to apply for an accidental disability retirement allowance within sixty (60) days from the date on which the treating physician certifies that the person's injury is permanent, or sixty (60) days from the date on which such determination of permanency is made in accordance with the independent medical examination procedures as set forth in the applicable collective bargaining agreement.

(1) If a person with injured on duty status fails to apply for an accidental disability retirement allowance from the state retirement board within the time frame set forth above, that person's injured on duty payment shall terminate. Further, any person suffering a static and incapacitating injury as set forth in subsection (j) above and who fails to apply for an accidental disability benefit allowance as set forth in subsection (j) shall have his or her injured on duty payment terminated.

(2) A person who so applies shall continue to receive injured on duty payments, and the right to continue to receive IOD payments of a person who so applies shall terminate in the event of a final ruling of the workers compensation court allowing accidental disability benefits. Nothing herein shall be construed to limit or alter any and all rights of the parties with respect to independent medical examination or otherwise, as set forth in the applicable collective bargaining agreement.

History of Section.

(P.L. 1944, ch. 1479, §§ 1, 2; P.L. 1944, ch. 1479, §§ 1-3; P.L. 1952, ch. 2915, § 1; G.L. 1956, § 45-19-1; P.L. 1960, ch. 126, § 1; P.L. 1972, ch. 212, § 1; P.L. 1973, ch. 245, § 1; P.L. 1975, ch. 154, § 1; P.L. 1976, ch. 167, § 1; P.L. 1984, ch. 333, § 1; P.L. 1986, ch. 371, § 1; P.L. 1987, ch. 527, § 1; P.L. 1988, ch. 64, § 1; P.L. 1988, ch. 329, § 1; P.L. 1990, ch. 419, § 1; P.L. 2001, ch. 77, art. 29, § 6; P.L. 2002, ch. 65, art. 14, § 2; P.L. 2007, ch. 243, § 1; P.L. 2007, ch. 284, § 1; P.L. 2007, ch. 329, § 1; P.L. 2007, ch. 497, § 3; P.L. 2007, ch. 519, § 3; P.L. 2011, ch. 151, art. 12, § 7; P.L. 2012, ch. 324, § 6; P.L. 2013, ch. 445, § 8; P.L. 2013, ch. 475, § 8.)

513 A.2d 18 (R.I. 1986), 84-540, Labbadia v. State /**/ div.c1 {text-align: center} /**/

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513 A.2d 18 (R.I. 1986)

Lawrence LABBADIA

v.

STATE of Rhode Island.

84-540-M.P.

Supreme Court of Rhode Island.

July 28, 1986.

Page 19

Anthony E. Grilli, Providence, for petitioner.

Arlene Violet, Atty. Gen., Madis T. Suvari, Sp. Asst. Atty. Gen., for respondent.

OPINION

WEISBERGER, Justice.

This case comes before us on petition for certiorari as provided by G.L.1956 (1979 Reenactment) §§ 28-35-29 and -30, as amended by P.L.1984, ch. 162, § 1. The petitioner, Lawrence Labbadia (Labbadia), seeks review of a decree of the Workers' Compensation Appellate Commission that affirmed a trial commissioner's decision denying and dismissing Labbadia's petition for workers' compensation benefits on grounds of lack of jurisdiction. We affirm. The facts are as follows.

Labbadia was employed by the State Department of Transportation as a crash-rescue crewmember at T.F. Green Airport. On November 22, 1978, while taking a practice run in a new rescue truck, Labbadia was knocked unconscious by an explosion. He was brought to a hospital emergency room and was treated for head, neck, and back injuries. Although Labbadia returned to work on a couple of occasions, he was unable to sustain the required activity, and his doctor advised him not to return to work. Labbadia continued to receive paychecks in the amount of his full salary from the date of his injuries until the termination of his employment, which termination became effective on July 11, 1981. ^[1]

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The chief claims representative of the State Division of Workers' Compensation testified that with the exception of the March 12, 1982 petition for workers' compensation benefits, there were no records in the division's files of any injuries or payments to Labbadia. In addition, the person in charge of payroll for the Department of Transportation testified that Labbadia was paid his full salary from the date of the injury to his termination and that this salary was paid by the department.

Labbadia petitioned for workers' compensation benefits on March 12, 1982. A hearing was held before a trial commissioner, memoranda were submitted, and a written decision was issued. The trial commissioner denied and dismissed Labbadia's petition on the ground that at the time of his injury Labbadia was not covered by the worker's compensation statutes but rather was covered by G.L.1956 (1980 Reenactment) § 45-19-1, a statute that provides full salary for crash-rescue crewmembers who are incapacitated while performing their duties. The Appellate Commission affirmed, and Labbadia petitioned this court for a writ of certiorari. We issued the writ to examine the issues raised by the petition.

Labbadia is seeking workers' compensation benefits from July 11, 1981, the date on which he was terminated from his crash-rescue job. Labbadia argues that he has been erroneously denied benefits. He asserts that even though crash-rescue crewmembers who are injured in the line of duty are provided full salary and other benefits by § 45-19-1, they are also entitled to workers' compensation benefits because they are not expressly excluded by the terms of G.L.1956 (1979 Reenactment) § 28-29-2(b), which defines those employees covered by the Workers' Compensation Act (WCA). He points out that police and firefighters, who are also provided § 45-19-1 benefits, are specifically excluded from the § 28-29-2(b) definition of the term "employee."

The state argues that the Workers' Compensation Commission lacks jurisdiction over a claim filed by a crash-rescue crewmember injured while performing his duties and from the date of the injury to the date of termination, received his full salary for a period of approximately two years and eight months. The state presented testimony at the hearing before the trial commissioner to show that Labbadia had received his checks from the Department of Transportation pursuant to § 45-19-1 and had not filed any reports or claims with the Workers' Compensation Commission or received any benefits from the commission. The state asserts that when the Legislature amended § 45-19-1 to include crash-rescue members, it impliedly excluded crash-rescue crewmembers from the WCA.

The Workers' Compensation Commission does not have jurisdiction to hear a claim unless the petitioner is an employee as defined in § 28-29-2(b), which states in part: "[E]mployee' means any person who has entered into the employment of or works under contract of service or apprenticeship with any employer * * *. It shall not include * * * the members of the regularly organized fire and police departments of any town or city * * *." When the WCA was first enacted, police officers, firefighters, and crash-rescue crewmembers were not excluded from the definition of "employee." See P.L.1912, ch. 831, art. 5, § 1. Police officers and firefighters were excluded

from the WCA by P.L.1917, ch. 1534, § 5. In 1944 the precursor to § 45-19-1 was enacted by P.L.1944, ch. 1479, which required cities and towns to pay police officers who were incapacitated during the course of performing their duties, their full salary for the duration of the incapacity. Firefighters were added to this statute by P.L.1952, ch. 2915, § 1, and crash-rescue crewmembers were added by P.L.1972, ch. 212, § 1. Thus fifty-five years after the Legislature excluded police officers and firefighters from the definition of "employee," crash-rescue crewmembers were given benefits under § 45-19-1 but were not explicitly

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excluded from the WCA's definition of "employee."

Section 45-19-1 provides in part:

"Salary payment during line of duty illness or injury.—Whenever any police officer, fireman or crash rescue crewman of any city, town or the state of Rhode Island shall be wholly or partially incapacitated by reason of injuries received or sickness contracted in the performance of his duties, the respective city, town or state of Rhode Island by which said police officer, fireman or crash rescue crewman is employed shall, during the period of such incapacity, pay such police officer, fireman or crash rescue crewman the salary or wage to which the said police officer, fireman or crash rescue crewman would be entitled had he not been so incapacitated, and in addition thereto shall pay such medical, surgical, dental, optical, or other attendance or treatment, nurses and hospital services, medicines, crutches and apparatus for such period as is necessary, except that if any said city, town or the state of Rhode Island shall provide said police officer, fireman or crash rescue crewman with insurance coverage for the above related treatment, services, or equipment, then said city, town or the state of Rhode Island shall only be obligated to pay the difference between the maximum amount allowable under said insurance coverage and the actual cost of said treatment, service or equipment.

"As used in this section, the term 'crash rescue crewman' shall mean and include any chief or other member of the Emergency Crash Rescue Section, Division of Airports, Department of Transportation of the State of Rhode Island regularly employed at a fixed salary or wage."

This provision gives police officers, firefighters, and crash-rescue crewmembers greater rights than they would have under either common law (where, for instance, they would have to show fault on the part of the employer as well as overcome certain defenses) or the WCA (where, even though the employee is relieved from proving fault, the employee receives only the percentage of salary provided in G.L.1956 (1979 Reenactment) § 28-33-17).

In deciding whether the inclusion of crash-rescue crewmembers in § 45-19-1 excluded them from the jurisdiction of the Workers' Compensation Commission, we are mindful that our duty is to determine and effectuate the legislative intent underlying these statutes. See, e.g., *State v. Delaurier*, 488 A.2d 688, 693 (R.I.1985); *Berkshire Cablevision of Rhode Island v. Burke*, 488 A.2d 676, 679 (R.I.1985).

The WCA was enacted to provide a no-fault mechanism to create employee benefits for job-related injuries. *Volpe v. Stillman White Co.*, 415 A.2d 1034, 1035 (R.I.1980). In exchange for their more cumbersome and often ineffective common-law remedies, employees are entitled to benefits for work-related injuries without proving fault and are also provided a procedure for claiming entitlement to benefits that is less costly and more expeditious. To effectuate this goal, the WCA generally provides the exclusive right and remedy for injured employees. *Hornsby v. Southland Corp.*, 487 A.2d 1069 (R.I.1985); *Cacchillo v. H. Leach Machinery Co.*, 111 R.I. 593, 305 A.2d 541 (1973). The Legislature has specifically established the WCA as the sole remedial avenue by enacting §§ 28-29-17 and -20, which provide that the right to compensation under the WCA is in lieu of all other rights and remedies.

Section 45-19-1 was intended to provide greater work-related-injury benefits to certain public employees whose jobs require them to serve the state or its municipalities, often in dangerous situations. When the Legislature added crash-rescue crewmembers to the list of those covered by § 45-19-1, it enhanced the rights and remedies of crash-rescue crewmembers injured in the line of duty. At the same time, because we must presume that the Legislature was aware of the exclusivity

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provisions of the WCA, see *Narragansett Food Services, Inc. v. Rhode Island Department of Labor*, 420 A.2d 805, 808 (R.I.1980), we are of the opinion that the Legislature impliedly excluded crash-rescue crewmembers from the WCA. If this were not so, crash-rescue crewmembers would be entitled to benefits under both the WCA and § 45-19-1. Such a result would be in direct conflict with the exclusivity-of-rights-and-remedies provisions of the WCA and with the clear legislative intent and policy behind the WCA.

Labbadia, however, asserts that the Legislature should have explicitly excluded crash-rescue crewmembers from the definition of "employee" in § 28-29-2(b) as it did for police officers and firefighters. He argues that without such exclusion we must find that he is entitled to workers' compensation benefits. It is true that definitions should usually be given their ordinary meaning and should usually be strictly construed. *Delaurier*, 488 A.2d at 693. However, as was pointed out in *Delaurier*, "[i]f a mechanical application of a statutory definition produces an absurd result or defeats legislative intent, this court will look beyond mere semantics and give effect to the purpose of the act." *Id.* at 694; see also *City of Warwick v. Aptt*, 497 A.2d 721, 724 (R.I.1985). We should also point out that § 28-29-2 begins by stating that the definitions that follow will apply "unless the context otherwise requires." A reading of the WCA, as a whole, leads us to conclude that the Legislature has clearly expressed its intent to make this statutory edifice the exclusive remedy whenever it is applicable. Consequently, we conclude that the granting of benefits under § 45-19-1 by clear implication excluded crash-rescue crewmembers from eligibility from workers' compensation remedies.

In view of the clear enunciation of the Legislature's intent to make the WCA the exclusive

remedy whenever applicable and their decision in § 45-19-1 to provide greater benefits to crash-rescue crewmembers, we hold that a crash-rescue crewmember who is injured while performing his duties is excluded from the WCA definition of "employee," and therefore, the Workers' Compensation Commission is without jurisdiction to hear such a claim. Any action by Labbadia concerning any available benefits for his work-related injury would be governed by § 45-19-1.

For the reasons stated, the petition for certiorari is denied, the writ heretofore issued is quashed, and the matter is remanded to the Appellate Commission with our decision endorsed thereon.

BEVILACQUA, C.J., participated in the oral argument and in the decision of the court but retired prior to the publication of this opinion.

Notes:

[1] Labbadia was terminated by his superiors at the Department of Transportation because he failed to take a required civil service examination. The propriety of this termination was not and could not be raised in this litigation, which deals solely with his claim for workers' compensation benefits.



MEMBERSHIP APPLICATION

2000

David C Jewcks Jr
 [REDACTED] MALE FEMALE
 Cumberland RI 029164
 EXEC. MILITARY STAFF STATE OF R.I. SINGLE MARRIED DIVORCED

STATE EMPLOYEE MUNICIPAL EMPLOYEE PUBLIC SCHOOL TEACHER
 CITY COUNCIL CORRECTIONAL OFFICER POLICE/FIRE
 OTHER _____

			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO

FINANCIAL DESIGNATION
 [REDACTED] MALE FEMALE
 [REDACTED]

I certify the above information to be true and correct and hereby accept ERSRI membership. I am not collecting a pension from either the Employees Retirement System of Rhode Island or the Municipal Employees Retirement System.

Signature [Signature] Date 1/29/04

Please return completed form to ERSRI, 40 Fountain Street, Providence, RI 02903-1834 Tel: (401) 222-2283 Fax: (401) 222-2430



COMPLETED BY PERSONNEL OFFICER		
DAVID C. JENCKS JR.		
EXECUTIVE MILITARY SKILL STATE OF R.I.		2000
FIRE FIGHTER	31,499.00	40.0
	2/8/2004	8.75%

MEMBER STATEMENT AND SIGNATURE

I certify that the above-named individual meets the stated requirements for membership in the Employees Retirement System of Rhode Island.

Signature David Jencks Jr. Date 1/29/04

Return To:
EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND
Attn: Disability Case Manager
50 Service Avenue, 2nd Floor
Warwick, RI 02886-1021
Office (401) 462-7600 Fax (401) 462-7691
Email: ersri@ersri.org Website: www.ersri.org

APPLICATION FOR ACCIDENTAL DISABILITY RETIREMENT

Employees' Retirement System of Rhode Island
State Employees / Teachers

Instructions: Please read all instructions and information provided on pages 3 - 6 of this application before completing the application. Please print legibly or type in black/blue ink and return the completed application to ERSRI. Failure to provide responses to all requested information will result in a delay in processing your application.

**THIS APPLICATION MUST BE COMPLETED BY YOU AND RECEIVED AND DATE STAMPED
BY ERSRI PRIOR TO YOUR TERMINATION FROM EMPLOYMENT**

MEMBER INFORMATION (please add email address if available)

Name: DAVID C JENCKS JR.

SSN: XXX-XX-XXXX

Address: [REDACTED]

City: WARWICK

State: RI

ZIP: 02886

Home Phone: [REDACTED]

Business Phone: [REDACTED]

Estimate No.: 0

Date of Birth: [REDACTED]

Email Address: [REDACTED]

Plan: Employees Retirement System

Benefit Structure: STEE

MEMBER STATUS

Present place of employment: Quonset Fire Dept / executive duty Present title: Firefighter / EMT

Present employment status: Terminated If terminated, date of termination: _____
 Leave with pay Leave without pay Family medical leave Still working Workers' Compensation Full pay IOD 45-19?

MEDICAL REASON FOR DISABILITY (ALL INFORMATION MUST BE COMPLETED)

1. Date of alleged accident (Refer to Official Injury Report): 4/19/2015

2. Describe the injury you received as result of the alleged accident which occurred on date you indicated in question 1 above: [REDACTED]

3. Describe your physical or mental incapacitation you now have as a result of your injury you described in questions 1 and 2 above which prevents you from continuing in your current employment: [REDACTED]

4. Do you [REDACTED] are permanently and totally disabled from any employment due to the injury you received as described in questions 1, 2 and 3 above? YES NO

If you answered YES in question 4, you must provide the reasons you feel you can never again work in any type of employment. You must limit your reasons to the injury you described in questions 1 through 4 above. (If additional space is needed, please use the back of the form): [REDACTED]

Have you been offered a light duty position? YES NO was mentioned but [REDACTED]

If you answered YES, have you accepted the position? YES NO (If you answered NO, please explain your answer): _____

Are you currently employed with any other government or private employer? YES NO

If YES, please describe the type of employment: _____

2016 AUG 30 AM 12:21

ERSRI



BENEFICIARY INFORMATION For Death Benefit Only. Death Benefit will be divided equally among beneficiaries listed below. See Option Selection Form to name beneficiary for Survivor Pension (Option 1 or Option 2).

First Name	MI	Last Name	Date of Birth (mm/dd/ccyy)
Address			SSN
City	State	Zip	Relationship
First Name	MI	Last Name	Date of Birth (mm/dd/ccyy)
Address			SSN
City	State	Zip	Relationship

WORKERS' COMPENSATION/INSURED ON DUTY INFORMATION

Are you currently receiving benefits from either Workers' Compensation or Injured on Duty (IOD)? YES NO

If you are currently receiving Workers' Compensation, indicate the weekly amount and starting date of such payments. Please be advised that if your application is approved, by law, your disability payments will be offset by the amount of your workers' compensation payments, including but not limited to lump sum payments and payments for scarring and loss of use.

If YES: Weekly Amount: \$ 2,372.92 + and / or Lump Sum Amount: \$ _____
Starting Date: 4 / 14 / 2015 Date Lump Sum Awarded / /

MEMBER CERTIFICATION (Must be completed) Please initial each statement after reading and sign:

- ✓ N/A I agree to cooperate fully with the requests and terms set forth by ERSRI and the Rhode Island General Laws governing disability retirement if I am approved for a Disability Pension.
- ✓ N/A I understand that if I am approved for an Accidental Disability pension, consistent with R.I.G.L. §36-10-15 and §16-16-17, as a condition of continued receipt of a disability retirement allowance, I must provide the Board with such affidavits and accurate evidence of earnings, employment and gainful activity as the Board may require including but not limited to joint and/or individual tax returns. I acknowledge that if I am in violation of the law, my pension benefit may be suspended.
- ✓ N/A I understand that if I am determined to be disabled from *service* (current employment), I will collect a benefit equal to 50% of my annual compensation at the time of my retirement subject to the provisions of RIGL §36-10-31 and §16-16-20, and that accepting employment which is the same or similar to the position from which I am disabled may result in suspension of my pension benefit.
- ✓ N/A I understand that if I am determined to be disabled from *any occupation*, I will collect a benefit equal to 66 2/3 % of my annual compensation at the time of my retirement subject to the provisions of RIGL §36-10-31 and §16-16-20, and that accepting any type of employment will result in suspension of my pension benefit.
- ✓ N/A I, the undersigned, certify that I have read all instructions and information and understand my rights and benefits as a member of the Employees' Retirement System of Rhode Island. I hereby make known my intention to apply for disability retirement as of the date the application is received by ERSRI.

I CERTIFY THAT THE INFORMATION PROVIDED ON THIS FORM IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, SIGNED AND SUBSCRIBED UNDER THE PENALTIES OF PERJURY.

Signature [Signature] Date 8/30/2015

ERSRI



084234

INCIDENT/INJURY REPORT FORM

REPORT ALL INJURIES WITHIN 24 HOURS

PLEASE TYPE OR PRINT IN BLACK INK. BE SURE TO PROVIDE ALL REQUESTED INFORMATION

I. EMPLOYEE REPORT: DEPARTMENT/EMPLOYER: Executive Military Staff IOD

LAST NAME: JENCKS JR. MIDDLE INITIAL: C FIRST NAME: DAVID

ADDRESS: Street: [REDACTED] City: WARWICK State: RI Zip: 02886

HOME PHONE: [REDACTED] SOC SEC #: [REDACTED] SEX: M F AGE: 45

JOB TITLE: Firefighter DATE OF INCIDENT: 4/19/15 TIME OF INCIDENT: 1130 AM/PM

BUILDING AND/OR AREA NORMALLY ASSIGNED: P-11 Fire Dept. Quonset

BUILDING AND/OR AREA WHERE INCIDENT OCCURRED: P-11 Flightline in side building

HOW MANY HOURS HAD YOU BEEN WORKING IN A ROW WHEN THIS OCCURRED: 4.5

DO YOU HAVE SUPPLEMENTAL EMPLOYMENT? Y N

WHAT ARE YOUR NORMAL WORK HOURS? 0700 AM/PM TO 0700 AM/PM Garcia-Schedule 24 hrs on 2 off

INDICATE ON THESE FIGURES THE AFFECTED BODY PART(S) AT TIME OF INJURY:



[REDACTED]

DESCRIBE AND ILLUSTRATE (ATTACHED) YOUR INJURY:

[REDACTED]

DESCRIBE THE INCIDENT:

[REDACTED]

WAS INJURY/INCIDENT REPORTED TO SUPERVISOR? YES NO

WAS INJURY/INCIDENT WITNESSED BY ANYONE? YES NO

WITNESS NAME (PRINT): All shift personnel

EMPLOYEE SIGNATURE: [Signature] DATE: 4/23/2015

WITNESS SIGNATURE: DATE:

II. SUPERVISOR REPORT

DATA AND TIME NOTIFIED 4/22/15 Charles Cinquegrana, Assistant Chief

WAS THERE A SPECIFIC INCIDENT/ACCIDENT? Y N UNKNOWN: DID YOU WITNESS THE INCIDENT/ACCIDENT? Y N

GIVE A STEP BY STEP DESCRIPTION OF WHAT YOU UNDERSTAND TO HAVE HAPPENED: Asst Chief Cinquegrana was contacted by employee 4/22/15 stating that he was going to Emergency Room. On Sunday, April 19, Mr. Jencks was [REDACTED]

WAS EMPLOYEE SENT TO DESIGNATED HEALTH CARE FACILITY FOR EVALUATION Yes NO X

- 1. X BODILY MOTION 2. INMATE/PRISONER HANDLING 3. X OBJECT HANDLING 4. CONTACT
5. SLIP/FALL 6. EXPOSURE/INHALATION 7. INMATE/PRISONER ASSAULT 8. CAUGHT
9. COLLISION/UPSET 10. AGGRAVATION OF PRE-EXISTING CONDITION 11. MISCELLANEOUS

SUPERVISOR NAME (PRINT): SIGNATURE: DATE:

ADMINISTRATOR'S SIGNATURE: Susan C. Jay, Spvg Employee Relations Officer DATE: 4/23/15

2016 AUG 30 ERS

LOVETT
SCHEFRIN
HARNETT, LTD
Attorneys &
Counsellors
at Law

September 28, 2016

Michael P. Robinson, Esq.
Shechtman Halperin Savage, LLP
1080 Main Street
Pawtucket, RI 02860

RE: David Jencks

Dear Mr. Robinson:

On April 19, 2015, David Jenks was injured in the course of his service as a firefighter while employed by the State of Rhode Island. Currently, he is receiving injury on duty (IOD) pay pursuant to R.I.G.L. §45-19-1 (as referenced by the enclosed Memorandum of Agreement). On September 13, 2016 his employer sent him a letter, (a copy of which is enclosed), telling him to apply for an accidental disability pension as dictated by §45-19-1(j)(1)&(2). He was warned that his failure to comply with the instructions explained in the letter would result in the termination of his IOD pay on October 19, 2016.

Mr. Jenks filed his application with the office of the ERSRI on August 30, 2016 (see enclosed copy of application). Soon thereafter he was told by a senior administration aide, Gloria Bernstein, that his application would not be processed further unless he initialed the certification sections of the form that authorized his application to be processed through R.I.G.L. §36-10-15 only.

Jenks is entitled to have his application processed under R.I.G.L. §45-21.2-9. §45-19-1 is addressed to any firefighter "of any city, town, fire district or the state of Rhode Island". §45-21.1-9(e) refers to "Any firefighter, including one employed by the state..." Labbadia v. State of Rhode Island, 513 A.2d 18 (1986)

Ron L. Lovett, 1934-1990
Alan R. Scheffrin, 1942-2010
John M. Harnett 't

Warren R. Wolf
Christopher M. Rawson*

*Member Rhode Island
and Massachusetts Bar

†Member New York Bar

The Summit East, Suite 200
300 Centerville Road
Warwick, RI 02886
Tel: 401/863-8800
Fax: 401/738-4838
Mass: 800/451-1602

CEEP 11"

RECEIVED
R10/3/16

September 28, 2016
David Jencks
Page 2 of 2

As you are aware, Title 45 provides a different substantive benefit, and additional procedural appellate remedies to firefighters than Title 36 provides to all other city, town, municipal and state workers. The General Assembly found this necessary to compensate firefighters differently since they are regularly exposed to greater dangers in the course of protecting the general public. City of East Providence v. IAF Local, 850 982 A.2d 1281.

Please share this letter with the powers of administration and let me know whether the Board will reconsider Ms. Bernstein's decision of refusing Jenks his right to pursue a disability pension pursuant to §45-21.2-9. Otherwise, I will have no choice but to assume Mr. Jenks has exhausted his administrative remedies with the Board and petition to the Rhode Island Superior Court for relief.

I await your response.

Very truly yours,

LOVETT SCHEFFRIN HARNETT, LTD.

JOHN M. HARNETT, ESQ.

JMH/crm
Enclosures

State of Rhode Island
MEMORANDUM OF AGREEMENT
Department of Labor and Training
Division of Workers' Compensation
P.O. Box 20190
Cranston, RI 02920-0942
Phone (401) 462-8100 TDD (401) 462-8006

Correction of Prior Report

DWC No.

Insurer File No. [REDACTED]

1. EMPLOYEE:

SSN: [REDACTED]
Name: David C Jencks
Addr: [REDACTED]
Addr:
CSZ: Warwick, RI 02886
Phone: [REDACTED] DOB:

2. EMPLOYER:

FEIN: [REDACTED]
Name: State of Rhode Island
Addr: 645 New London Ave.
Addr:
CSZ: Cranston RI 02920
Phone: (401) 275-4648

3. INSURANCE COMPANY NAMED ON WC POLICY:

FEIN: [REDACTED]
Name: State of Rhode Island
Addr: 1 Capitol Hill
Addr: DOA / SEWC
CSZ: Providence RI 02908-5866
Phone: 401-574-8500

4. CLAIM ADMINISTRATOR:

FEIN: [REDACTED]
Name: State of Rhode Island
Addr: 1 Capitol Hill
Addr: DOA / SEWC
CSZ: Providence, RI 02908-5866
Phone: 401-574-8500

Injury Date: 04/19/2015
First Date of First Disability: 04/22/2015
Place where injury occurred: Quonset Buildi

List injured body parts and nature of injury:
[REDACTED]

DISABILITY TYPE: (check all that apply)

Temporary Total as of _____
 Temporary Partial as of 4/22/2015

Death Benefits/Date of Death _____
Payable to: _____
Permanent Total as of _____

RATE INFORMATION: _____ Single _____ Married _____ Number of Exemptions _____

AWW Including Overtime 1361.61
Spendable Base Wage _____
Base Compensation Rate _____

AWW (include bonus/no OT) _____
Average Overtime Amount _____
Number of Dependents _____
Weekly Dependency Rate _____
Total Weekly Rate _____

DATE OF INITIAL PAYMENT UNDER MOA: 5/13/2015

Does employee have other employers? Yes No If yes, attach a wage statement from each employer.

Is this a recurrence of a previous injury? Y / N Previous disability end date _____

Has the employee worked at least 26 weeks prior to this recurrence. Yes No

If yes, a new wage statement is required.
Signature: Alice Pierce Date: 8/21/2015

Print Name: Alice Pierce Phone and Extension: 574-8512

NOTICE TO EMPLOYEES RECEIVING WORKERS' COMPENSATION BENEFITS:

YOU MUST REPORT ANY EARNINGS you receive to the Claim Administrator that pays your benefits. Failure to report earnings may subject you to civil or criminal liability. Your endorsement on a benefit check is your statement that you are qualified to receive workers' compensation benefits. You are NOT entitled to receive workers' compensation benefits for any time that you are imprisoned as a result of a criminal conviction.

ATTACH WAGE STATEMENT(S) AND DEPENDENCY FORM

DWC-02 (01/03) For instructions visit our web site: www.dlt.ri.gov/wc

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS



MILITARY STAFF
OFFICE OF THE ADJUTANT GENERAL
Command Readiness Center
645 New London Avenue
Cranston, RI 02920-3097

Gina M. Raimondo
Governor
Br. Christopher P. Callahan
Director

September 13, 2016

Mr. David Jencks
[REDACTED]

Warwick, Rhode Island 02886

Date of Injury: 4/19/2015
Date of Incapacity: 4/22/2015
Claim: [REDACTED]

Dear Mr. Jencks:

You were injured on April 19, 2015 and began receiving Injured on Duty benefits effective April 22, 2015. This letter is intended to inform you of your rights pursuant to Rhode Island Law because you are receiving Injured on Duty benefits due to your work related injury.

Rhode Island law provides that your Injured on Duty benefits will be terminated once you return to work or upon a finding made at the Worker's Compensation Court that you are no longer disabled. Further the duration of such benefits is time limited by statute. Rhode Island General Laws §45-19-1(j)(1) & (2) provides:

(j) Any person receiving injured on-duty benefits pursuant to this section, and subject to the jurisdiction of the state retirement board for accidental retirement disability, for an injury occurring on or after July 1, 2011, shall apply for an accidental disability retirement allowance from the state retirement board not later than the later of eighteen (18) months after the date of the person's injury that resulted in said person's injured on duty status or sixty (60) days from the date on which the treating physician certifies that the person has reached maximum medical improvement. Nothing herein shall be construed to limit or alter any and all rights of the parties with respect to independent medical examination or otherwise, as set forth in the applicable collective bargaining agreement. Notwithstanding the foregoing, any person receiving injured on duty benefits as the result of a static and incapacitating injury whose permanent nature is readily obvious and ascertainable shall be required to apply for an accidental disability retirement allowance within sixty (60) days from the date on which the treating physician certifies that the person's injury is permanent, or sixty (60) days from the date on which such determination of permanency is made in accordance with the independent medical examination procedures as set forth in the applicable collective bargaining agreement.

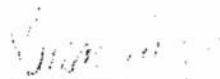
(1) If a person with injured on duty status fails to apply for an accidental disability retirement allowance from the state retirement board within the time frame set forth above, that person's injured on duty payment shall terminate. Further, any person suffering a static and incapacitating injury as set forth in subsection (j) above and who fails to apply for an accidental disability benefit allowance as set forth in subsection (j) shall have his or her injured on duty payment terminated.

(2) A person who so applies shall continue to receive injured on duty payments, and the right to continue to receive IOD payments of a person who so applies shall terminate in the event of a final ruling of the workers compensation court allowing accidental disability benefits. Nothing herein shall be construed to limit or alter any and all rights of the parties with respect to independent medical examination or otherwise, as set forth in the applicable collective bargaining agreement.

If you remain on Injured on Duty status and you have not applied for accidental retirement disability benefits pursuant to RIGL §45-19-1(j), the State of Rhode Island may terminate your benefits upon reaching the eighteen months: October 19, 2016.

* If you have any further questions regarding your status while collecting Injured on Duty benefits, please call me at (401)275-4648.

Sincerely,


Susan C. Jay
Supervising Employee Relations Officer

Cc: Christopher P. Callahan, Director
Chief Todd Mullane
Brendan Gill, President, L2886
Alice Pierce

Return To:
EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND
Attn: Disability Case Manager
50 Service Avenue, 2nd Floor
Warwick, RI 02886-1021
Office (401) 462-7600 Fax (401) 462-7691
Email: ersri@ersri.org Website: www.ersri.org

APPLICATION FOR ACCIDENTAL DISABILITY RETIREMENT

Employees' Retirement System of Rhode Island
State Employees / Teachers

Instructions: Please read *all* instructions and information provided on pages 3 - 6 of this application *before* completing the application. Please print legibly or type in black/blue ink and return the completed application to ERSRI. Failure to provide responses to all requested information will result in a delay in processing your application.

**THIS APPLICATION MUST BE COMPLETED BY YOU AND RECEIVED AND DATE STAMPED
BY ERSRI PRIOR TO YOUR TERMINATION FROM EMPLOYMENT**

MEMBER INFORMATION (please add email address if available)

Name: **DAVID C JENCKS JR.**

SSN: XXX-XX-XXXX

Address: [REDACTED]

City:
WARWICK

State:
RI

ZIP:
02886

Home Phone: [REDACTED]

Business Phone: [REDACTED]

Estimate No.: 0

Date of Birth: [REDACTED]

Email Address: [REDACTED]

Plan:
Employees Retirement System

Benefit Structure:
STEE

MEMBER STATUS

Present place of employment: Quonset fire Dept / executive military staff Present title: Firefighter / EMT

Present employment status: Terminated If terminated, date of termination: _____ Full pay FOD 45-19?
 Leave with pay Leave without pay Family medical leave Still working Workers' Compensation

MEDICAL REASON FOR DISABILITY (ALL INFORMATION MUST BE COMPLETED)

1. Date of alleged accident (Refer to Official Injury Report): 4/19/2015

2. Describe the injury you received as result of the alleged accident which occurred on date you indicated in question 1 above: [REDACTED]

3. Describe your physical or mental incapacitation you now have as a result of your injury you described in questions 1 and 2 above which prevents you from continuing in your current employment: [REDACTED]

4. Do you believe you are permanently and totally disabled from any employment due to the injury you received as described in questions 1, 2 and 3 above? YES NO

If you answered YES in question 4, you must provide the reasons you feel you can never again work in any type of employment. You must limit your reasons to the injury you described in questions 1 through 4 above. (If additional space is needed, please use the back of the form):
[REDACTED]

Have you been offered a light duty position? YES NO was mentioned [REDACTED]

If you answered YES, have you accepted the position? YES NO (If you answered NO, please explain your answer): _____

Are you currently employed with any other government or private employer? YES NO

If YES, please describe the type of employment: _____

2016 AUG 30 AM 11:27

ERSRI



BENEFICIARY INFORMATION for Death Benefit Only. Death Benefit will be divided equally among beneficiaries listed below. See Option Selection Form to name Beneficiary for Survivor Pension (Option 1 or Option 2).

First Name	MI	Last Name	Date of Birth (mm/dd/ccyy)
Address			SSN
City		State	Zip
First Name	MI	Last Name	Date of Birth (mm/dd/ccyy)
Address			SSN
City		State	Zip
			Relationship

WORKERS' COMPENSATION / INJURED ON DUTY INFORMATION

Are you currently receiving benefits from either Workers' Compensation or Injured on Duty (IOD)? YES NO

If you are currently receiving Workers' Compensation, indicate the weekly amount and starting date of such payments. Please be advised that if your application is approved, by law, your disability payments will be offset by the amount of your workers' compensation payments, including but not limited to lump sum payments and payments for scarring and loss of use.

If YES: Weekly Amount: \$ 2,372.92 + and / or Lump Sum Amount: \$ _____
 Starting Date: 4/19/2015 Date Lump Sum Awarded: / /

MEMBER CERTIFICATION (Must be completed) Please initial each statement after reading and sign:

- ✓ N/A I agree to cooperate fully with the requests and terms set forth by ERSRI and the Rhode Island General Laws governing disability retirement if I am approved for a Disability Pension.
- ✓ N/A I understand that if I am approved for an Accidental Disability pension, consistent with R.I.G.L. §36-10-15 and §16-16-17, as a condition of continued receipt of a disability retirement allowance, I must provide the Board with such affidavits and accurate evidence of earnings, employment and gainful activity as the Board may require including but not limited to joint and/or individual tax returns. I acknowledge that if I am in violation of the law, my pension benefit may be suspended.
- ✓ N/A I understand that if I am determined to be disabled from *service* (current employment), I will collect a benefit equal to 50% of my annual compensation at the time of my retirement subject to the provisions of RIGL §36-10-31 and §16-16-20, and that accepting employment which is the same or similar to the position from which I am disabled may result in suspension of my pension benefit.
- ✓ N/A I understand that if I am determined to be disabled from *any occupation*, I will collect a benefit equal to 66 2/3 % of my annual compensation at the time of my retirement subject to the provisions of RIGL §36-10-31 and §16-16-20, and that accepting any type of employment will result in suspension of my pension benefit.
- ✓ N/A I, the undersigned, certify that I have read all instructions and information and understand my rights and benefits as a member of the Employees' Retirement System of Rhode Island. I hereby make known my intention to apply for disability retirement as of the date the application is received by ERSRI.

I CERTIFY THAT THE INFORMATION PROVIDED ON THIS FORM IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. SIGNED AND SUBSCRIBED UNDER THE PENALTIES OF PERJURY.

Signature [Handwritten Signature] Date 8/29/2015



982 A.2d 1281 (R.I. 2009), 2007-277, City of East Providence v. International Ass'n of Firefighters Local 850 /**/ div.c1 {text-align: center} /**/

Page 1281

982 A.2d 1281 (R.I. 2009)

CITY OF EAST PROVIDENCE

v.

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 850.

No. 2007-277-Appeal.

Supreme Court of Rhode Island.

November 20, 2009

Page 1282

Gina A. DiCenso, Esq., for Plaintiff.

Margaret L. Hogan, Esq., Wakefield, for Defendant.

Present: SUTTELL, C.J., GOLDBERG, FLAHERTY, ROBINSON, JJ., and WILLIAMS, C.J.

(ret.).

Page 1283

OPINION

WILLIAMS (ret.), Chief Justice.

After successfully undergoing treatment for prostate cancer, East Providence Fire Department Battalion Chief, James Moniz (Chief Moniz), requested that his sick leave be restored and that he be given the full benefits pursuant to G.L. 1956 chapter 19.1 of title 45, entitled "Cancer Benefits for Fire Fighters." After his request was denied by the City of East Providence (the city), the International Association of Firefighters, Local 850 (Local 850), filed a grievance on his behalf alleging that the denial of the request to restore Chief Moniz's sick time violated the parties' collective-bargaining agreement. The parties submitted to arbitration, and the arbitrator issued a decision granting the restoration of Chief Moniz's forty-four days of sick time. The Superior Court confirmed the award, and the city timely appealed. In this case we are called upon to determine whether the arbitrator exceeded his authority in determining that East Providence firefighters are entitled to injured on-duty benefits through the application of the "Cancer Benefits for Fire Fighters" statute. For the reasons set forth in this opinion, we conclude that the "Cancer Benefits for Fire Fighters" statute does indeed provide injured on-duty benefits to East Providence



Employees' Retirement System of Rhode Island

ERSRI Board: September 15, 2017

Seth Magaziner
General Treasurer
Chair

First Class U.S. Mail and Return Receipt Requested

William B. Finelli
Vice Chair

DAVID JENCKS JR.

Warwick, RI 02886

Roger P. Boudreau

Merk A. Carruolo

RE: Retirement Board Meeting of September 13, 2017

Brian M. Daniels

Dear Mr. Jencks Jr.:

Michael DiBiase

Paul L. Dion

Thomas M. Lambert

John P. Maguire

Marianne F. Monte

We write to inform you that on September 13, 2017 the Retirement Board voted to approve your application for an Accidental disability pension for 50% of your compensation at the time of your retirement pursuant to Rhode Island General Law (RJGL) §36-10-15(b). The subcommittee found you to be permanently and totally disabled from service, but did not find you to be permanently and totally disabled from any employment consistent with §36-10-15(c) and §28-33-17(b).

Thomas A. Mullaney

Claire M. Newell

Marcia B. Reback

Jean Rondeau

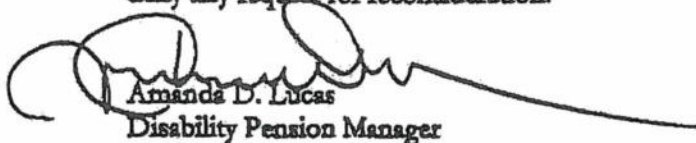
Your counselor Maryann Pernorio will be in contact with you regarding the information and forms required to process your disability pension.

Laura Shewhughes

Frank J. Karpinski
Executive Director

If you have any questions, please contact Ms. Pernorio at 401.462.7600. She will guide you through the disability enrollment process.

You have the right to appeal this decision and to have a hearing. The hearing will be before the Disability Subcommittee who will make a recommendation to the Retirement Board. The request for appeal shall be in writing, signed by you or your attorney and shall contain your name, the date and nature of the decision being contested and a clear statement of the objection to the decision. The request for appeal must be received by this office within 30 days of the date of this letter. The request shall be sent to the Executive Director, Employees' Retirement System of Rhode Island, 50 Service Avenue 2nd Floor, Warwick, Rhode Island 02886. Failure to strictly comply with these procedures shall be grounds to deny any request for reconsideration.


Amanda D. Lucas
Disability Pension Manager

ADL/kam

Enclosures

cc: susan.c.jay.nfg@mail.mil

LOVETT SCHEFRIN HARNETT, LTD.

TORO LAW OFFICES, P.C.

ATTORNEYS AT LAW

300 Centerville Road, Ste.200 East
Warwick, Rhode Island 02886

(401) 863-8800 Telephone
(401) 738-4838 Facsimile
jharnett@lovettlew.com

John M. Harnett, Esq.*
*admitted in RI, MA & NY

RI (401) 734-9595 Telephone
MA (608) 730-2800 Telephone
(401) 734-4474 Facsimile
john@torolaw.com

John A. Toro*
*admitted in RI and MA

October 5, 2017

ATTN: Frank J. Karpinski
Executive Director
Employees' Retirement
System of Rhode Island
50 Service Avenue
2nd Floor
Warwick, RI 02886

RE: David Jencks Jr.

Dear Mr. Karpinski:

Please accept this as Mr. Jencks's Appeal/Request for Hearing before the Disability Subcommittee, from the Retirement Board's decision to approve his application for a disability pension consistent with §36-10-15(c), by letter dated September 15, 2017.

The Statement of Objection to the Board's decision is as follows:

FACTS:

On April 19, 2015, David Jencks was injured in the course of his service as a firefighter while employed by the State of Rhode Island. Currently, he is receiving injury on duty (IOD) pay pursuant to R.I.G.L. §45-19-1 (as referenced by the enclosed Memorandum of Agreement). On September 13, 2016 his employer sent him a letter (a copy of which is enclosed) telling him to apply for an accidental disability pension as dictated by §45-19-1(j)(1) & (2). He was warned that his failure to comply with the instructions explained in the letter would result in the termination of his IOD pay on October 19, 2016.

October 5, 2017
David Jencks
Page 2 of 2

Mr. Jenks filed his application with the office of the ERSRI on August 30, 2016. On September 15, 2017 the Retirement Board granted him an accidental disability pension, however under Title §36, not §45-19-1.

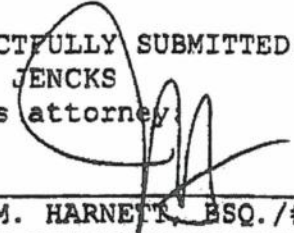
REASONS OF APPEAL:

Jenks is entitled to have his application processed under R.I.G.L. §45-21.2-9. §45-19-1 is addressed to any firefighter "of any city, town, fire district or the state of Rhode Island". §45-21.1-9 (e) refers to "Any firefighter, including one employed by the state..." Labbadia v. State of Rhode Island 513 A.2d 18 (1986)

Title §45 provides a different substantive benefit and additional procedural appellate remedies to firefighters than Title §36 provides to all other city, town, municipal and state workers. The general assembly found this necessary to compensate firefighters differently since they are regularly exposed to greater dangers in the course of protecting the general public. City of East Providence v. IAF Local 850 982 A.2d 1281.

The Board's decision of refusing Jenks right to pursue a disability pension pursuant to §45-21.2-9 is against the law as stated above.

RESPECTFULLY SUBMITTED:
DAVID JENCKS
By his attorney:



JOHN M. HARNETT, ESQ./#2672
LOVETT SCHEFRIN HARNETT, LTD.
300 Centerville Road
Summit East - Suite 200
Warwick, RI 02886
(401) 863-8800
Jharnett@lovettlaw.com

JMH/crm
Enclosures



Employees' Retirement System of Rhode Island

ERSRI Board:

November 15, 2017

Seth Magaziner
General Treasurer
Chair

William B. Finelli
Vice Chair

Roger P. Boudreau

Mark A. Carruolo

Brian M. Daniels

Michael DiBiase

Paul L. Dion

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Marcia B. Reback

Jean Rondeau

Laura Shawhughes

Frank J. Karpinski
Executive Director

John M. Harnett, Esq.
LOVETT SCHEFRIN HARNETT, LTD.
300 Centerville Road
Summit East - Suite 200
Warwick, RI 02886

RE: Request for a Hearing - David Jencks, Jr.

Dear Attorney Harnett:

In accordance with Rhode Island General Laws §36-8-3 and the Rules of Practice and Procedures for Hearings, your request for a hearing has been assigned to:

HEARING OFFICER: Raymond A. Marcaccio Esq.
Phone: (401) 861-2900
LOCATION: Employees' Retirement System of Rhode Island
50 Service Avenue, 2nd Floor
Warwick, RI 02886

You should contact the hearing officer to arrange a mutually convenient time to hold the hearing.

An applicant may represent him/her self at this Hearing or the case may be presented by a lawyer. Consistent with Rhode Island General Law §11-27-2, entitled "*Practice of law*" defined, any person accompanying the applicant who is not a lawyer cannot present the applicant's case to the Hearing Officer.

Should you have any additional questions, please do not hesitate to contact me at (401) 462-7608.

Sincerely,

Roxanne Donoyan
Assistant to the Executive Director

cc: David Jencks, Jr.
Raymond A. Marcaccio, Esq.
Michael P. Robinson, Esq.

State of Rhode Island
MEMORANDUM OF AGREEMENT
Department of Labor and Training
Division of Workers' Compensation
P.O. Box 20190
Cranston, RI 02920-0942
Phone (401) 462-8100 TDD (401) 462-8006

Correction of Prior Report

DWC No.

Insurer File No. 084234 APP

1. EMPLOYEE:

SSN: [REDACTED]
Name: David C Jencks
Addr: [REDACTED]
Addr: [REDACTED]
CSZ: Warwick, RI 02886
Phone: [REDACTED] DOB: [REDACTED]

2. EMPLOYER:

FEIN: [REDACTED]
Name: State of Rhode Island
Addr: 645 New London Ave.
Addr: [REDACTED]
CSZ: Cranston RI 02920
Phone: (401) 275-4648

3. INSURANCE COMPANY NAMED ON WC POLICY:

FEIN: [REDACTED]
Name: State of Rhode Island
Addr: 1 Capitol Hill
Addr: DOA / SEWC
CSZ: Providence RI 02908-5866
Phone: 401-574-8500

4. CLAIM ADMINISTRATOR:

FEIN: [REDACTED]
Name: State of Rhode Island
Addr: 1 Capitol Hill
Addr: DOA / SEWC
CSZ: Providence, RI 02908-5866
Phone: 401-574-8500

Injury Date: 04/19/2015
First Date of First Disability: 04/22/2015
Place where injury occurred: Quonset Buildi

List injured body parts and nature of injury:
[REDACTED]

DISABILITY TYPE: (check all that apply)

Temporary Total as of _____
 Temporary Partial as of 4/22/2015

Death Benefits/Date of Death _____
Payable to: _____
Permanent Total as of _____

RATE INFORMATION: Single Married Number of Exemptions _____

AWW Including Overtime 1361.61
Spendable Base Wage _____
Base Compensation Rate _____

AWW (include bonus/no OT) _____
Average Overtime Amount _____
Number of Dependents _____
Weekly Dependency Rate _____
Total Weekly Rate _____

DATE OF INITIAL PAYMENT UNDER MOA: 5/13/2015

Does employee have other employers? Yes No If yes, attach a wage statement from each employer.

Is this a recurrence of a previous injury? Y / N Previous disability end date _____
Has the employee worked at least 26 weeks prior to this recurrence. Yes No
If yes, a new wage statement is required.

Signature: Alice Pierce

Date: 8/21/2015

Print Name: Alice Pierce

Phone and Extension: 574-8512

NOTICE TO EMPLOYEES RECEIVING WORKERS' COMPENSATION BENEFITS:

YOU MUST REPORT ANY EARNINGS you receive to the Claim Administrator that pays your benefits. Failure to report earnings may subject you to civil or criminal liability. Your endorsement on a benefit check is your statement that you are qualified to receive workers' compensation benefits. You are NOT entitled to receive workers' compensation benefits for any time that you are imprisoned as a result of a criminal conviction.

ATTACH WAGE STATEMENT(S) AND DEPENDENCY FORM

DWC-02 (01/03) For instructions visit our web site: www.dlt.ri.gov/wc

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS



MILITARY STAFF
OFFICE OF THE ADJUTANT GENERAL

Connecticut Knowledge Center
645 New London Avenue
Providence, RI 02903-3007

Gina M. Rainone
GOVERNOR
By: Christopher P. Cahill, Jr.
Director

September 13, 2016

Mr. David Jencks
[REDACTED]

Warwick, Rhode Island 02886

Date of Injury: 4/19/2015

Date of Incapacity: 4/22/2015

Claim: [REDACTED]

Dear Mr. Jencks:

You were injured on April 19, 2015 and began receiving Injured on Duty benefits effective April 22, 2015. This letter is intended to inform you of your rights pursuant to Rhode Island Law because you are receiving Injured on Duty benefits due to your work related injury.

Rhode Island law provides that your Injured on Duty benefits will be terminated once you return to work or upon a finding made at the Worker's Compensation Court that you are no longer disabled. Further, the duration of such benefits is time limited by statute. Rhode Island General Laws §45-19-1(j)(1) & (2) provides:

(j) Any person receiving injured on-duty benefits pursuant to this section, and subject to the jurisdiction of the state retirement board for accidental retirement disability, for an injury occurring on or after July 1, 2011, shall apply for an accidental disability retirement allowance from the state retirement board not later than the later of eighteen (18) months after the date of the person's injury that resulted in said person's injured on duty status or sixty (60) days from the date on which the treating physician certifies that the person has reached maximum medical improvement. Nothing herein shall be construed to limit or alter any and all rights of the parties with respect to independent medical examination or otherwise, as set forth in the applicable collective bargaining agreement. Notwithstanding the forgoing, any person receiving injured on duty benefits as the result of a static and incapacitating injury whose permanent nature is readily obvious and ascertainable shall be required to apply for an accidental disability retirement allowance within sixty (60) days from the date on which the treating physician certifies that the person's injury is permanent, or sixty (60) days from the date on which such determination of permanency is made in accordance with the independent medical examination procedures as set forth in the applicable collective bargaining agreement.

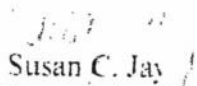
(1) If a person with injured on duty status fails to apply for an accidental disability retirement allowance from the state retirement board within the time frame set forth above, that person's injured on duty payment shall terminate. Further, any person suffering a static and incapacitating injury as set forth in subsection (j) above and who fails to apply for an accidental disability benefit allowance as set forth in subsection (j) shall have his or her injured on duty payment terminated.

(2) A person who so applies shall continue to receive injured on duty payments, and the right to continue to receive IOD payments of a person who so applies shall terminate in the event of a final ruling of the workers compensation court allowing accidental disability benefits. Nothing herein shall be construed to limit or alter any and all rights of the parties with respect to independent medical examination or otherwise, as set forth in the applicable collective bargaining agreement.

If you remain on Injured on Duty status and you have not applied for accidental retirement disability benefits pursuant to RIGL §45-19-1(j), the State of Rhode Island may terminate your benefits upon reaching the eighteen months: October 19, 2016.

If you have any further questions regarding your status while collecting Injured on Duty benefits, please call me at (401)275-4648.

Sincerely,


Susan C. Jay
Supervising Employee Relations Officer

Cc: Christopher P. Callahan, Director
Chief Todd Mullane
Brendan Gill, President, L2886
Alice Pierce

LOVETT SCHEFRIN HARNETT, LTD.

TORO LAW OFFICES, P.C.

ATTORNEYS AT LAW

300 Centerville Road, Ste.200 East
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MA (508) 730-2800 Telephone
(401) 734-4474 Facsimile
john@torolaw.com

John M. Harnett, Esq.*
*admitted in RI, MA & NY

June 18, 2018

John A. Toro*
*admitted in RI and MA

Shechtman Halperin Savage, LLP
ATTN: Michael P. Robinson, Esq.
1080 Main Street
Pawtucket, RI 02860

RE: David Jencks, Jr.

Dear Mr. Robinson:

Enclosed please find a copy of my Memorandum of Law in regard to the above matter.

Also, please know that I am requesting an amendment to the Stipulation of Facts previously provided to Mr. Marcaccio to include the September 13, 2016 letter sent to Mr. Jencks.

Very truly yours,

LOVETT SCHEFRIN HARNETT, LTD.

JOHN M. HARNETT, ESQ.

JMH/crm
Enclosure

LOVETT SCHEFRIN HARNETT, LTD.

ATTORNEYS AT LAW

TORO LAW OFFICES, P.C.

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*admitted in RI, MA & NY

June 20, 2018

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(401) 734-4474 Facsimile
john@torolaw.com

John A. Toro*
* admitted in RI and MA

Shechtman Halperin Savage, LLP
ATTN: Michael P. Robinson, Esq.
1080 Main Street
Pawtucket, RI 02860

RE: David Jencks, Jr.

Dear Mr. Robinson:

Enclosed please find a copy of my Memorandum of Law, which I have provided to Mr. Marcaccio. Kindly provide me a copy of your Memorandum once you have sent it to him as well.

Very truly yours,

LOVETT SCHEFRIN HARNETT, LTD.

JOHN M. HARNETT, ESQ.

JMH/crm
Enclosures

received
6/22/18

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

EMPLOYEES' RETIREMENT SYSTEM OF
THE STATE OF RHODE ISLAND

Before Hearing Officer
Raymond Marcaccio, Esq.

RE: David C. Jencks, Jr.

JENCKS' MEMORANDUM OF LAW

INTRODUCTION

Jencks' has appealed a decision made by ERSRI granting him an accidental disability pension pursuant to R.I.G.L. §36-10-15 instead of §45-21.2-9.

FACTS:

Jencks is a firefighter employed by the State of Rhode Island. On April 19, 2015, Jencks injured [REDACTED] in the course of his employment when [REDACTED]. As a result of that injury Jencks has been receiving Injury on Duty pay (IOD) since April 22, 2015, pursuant to R.I.G.L. §45-19-1.

On September 13, 2016, Jencks received a letter from the Office of the Adjutant General. That letter notified him of his obligation to apply for an accidental disability pension as a condition necessary to continue to receiving IOD pay. The letter specifically cited 2145-19-1(j)(1) & (2). Subsection 2 specifically provides,

"(2) A person who so applies shall continue to receive injured on duty payments, and the right

to continue to receive IOD payments of a person who so applies shall terminate **in the event of a final ruling of the workers compensation court** allowing accidental disability benefits. Nothing herein shall be construed to limit or alter any and all rights of the parties with respect to independent medical examination or otherwise, as set forth in the applicable collective bargaining agreement." (Emphasis provided)

Jencks filed his application with the retirement board on August 30, 2016. Soon thereafter he was told by a senior administrative aide, Gloria Bernstein, that his application would not be processed further unless he initialed the certification sections of the form that authorized his application to be processed through R.I.G.L. §36-10-15 only. Jencks refused to do so. He expressed his desire to have his application processed pursuant to R.I.G.L. §45-21.2-9.

On September 15, 2017, the retirement board granted Jencks an accidental disability under R.I.G.L. §36-10-15. Jencks appealed.

ISSUE:

Did ERSRI err by not granting Jencks' application for an accidental disability pension under Title 45-21.2-9?

ARGUMENT:

Jencks is entitled to have his application processed under R.I.G.L. §45-21.2-9.

Section 45-19-1 is addressed to any firefighter "of any city, town, fire district or the state of Rhode Island". 45-21.1-9(e) refers to "Any firefighter, including one employed by the state."

Title 45 provides a different substantive benefit and additional procedural appellate remedy to firefighters than Title 36 provides to all other city, town, municipal and state workers. The board's decision provided Jenks with a monthly pension rate of only 50% of his prior wage (instead of the usual 66 2/3% awarded to all other fighters) and it allowed him a limited appeal to the Superior Court for an Administrative Procedures Act review. An award under Title 45 would have allowed Jenks an appeal, if necessary, to the Workers' Compensation Court for a de novo review.

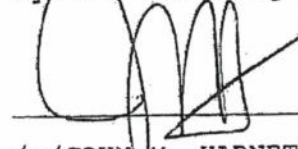
Jenks is required to pursue his appeal to the Workers' Compensation Court as a necessary condition of receiving his IOD pay on appeal. A denial of this right will terminate those benefits by operation of law.

Jenks seeks a ruling finding his application should be processed under Title 45 not Title 36.

RESPECTFULLY SUBMITTED:

DAVID C. JENCKS, JR.

By his attorney:

A handwritten signature in black ink, appearing to read 'John M. Harnett', is written over a horizontal line. The signature is stylized and somewhat cursive.

/s/JOHN M. HARNETT, ESQ./#2672

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300 Centerville Road

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Jharnett@lovettlaw.com

CERTIFICATE OF SERVICE

I hereby certify that, on the 20th day of June, 2018 a copy of the within Memorandum was mailed to Michael P. Robinson, Esq., Shechtman Halperin Savage, LLP, 1080 Main Street, Pawtucket, RI 02860.

Christina Magister

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

EMPLOYEES' RETIREMENT SYSTEM
OF THE STATE OF RHODE ISLAND

Before Hearing Officer
Raymond Marcaccio, Esq.

RE: David C. Jencks, Jr.

MEMORANDUM OF LAW OF THE EMPLOYEES' RETIREMENT
SYSTEM OF THE STATE OF RHODE ISLAND

Introduction

David C. Jencks, Jr. ("Jencks") appeals from a decision of the Disability Subcommittee (the "Subcommittee") of the Employees' Retirement System of the State of Rhode Island ("ERSRI") which granted him a disability pension pursuant to R.I.G.L. § 36-10-15(b) applicable to state employees. Jencks contends that his application should have been decided pursuant to R.I.G.L. § 45-21.2-9 because he is a fire fighter.

Facts

The facts in this matter have been stipulated to by the parties, and the Stipulation of Facts ("SOF") is attached hereto as Exhibit A. References to the SOF will be to its numbered paragraphs.

Issue

Did the subcommittee properly consider Jencks's application pursuant to R.I.G.L. § 36-10-15?

Argument

As more particularly set forth below, Jencks is not, nor has he ever been, a member of the Municipal Employees' Retirement System of the State of Rhode Island (MERS"). In order to be eligible for an accidental disability pension under the terms of R.I.G.L. § 45-21.2-9 for his claimed injury, he would have to be a member of MERS. He is not entitled to be paid benefits from the trust established by Title 45 when all contributions applicable to his service have been paid to the trust established by Title 36. Inartful drafting in R.I.G.L. § 45-19-1(j)(2) does not create a right in state employees to have their disability applications determined pursuant to §45-21.2-9.

1. Jencks is not a member of MERS.

Prior to his application for a disability retirement, Jencks was receiving Injured on Duty benefits pursuant to R.I.G.L. § 45-19-1. SOF, ¶ 3. While Rhode Island's Injured on Duty statute arguably applies to fire fighters employed by the state, it does not set forth the terms upon which a state firefighter applies for, or becomes eligible for, accidental disability benefits. The Injured on Duty statute is a substitute for workers' compensation. *McCain v. Town of N. Providence*, 41 A.3d 239, 244 (R.I. 2012). "However, workers' compensation is not intended as a substitute for retirement, and therefore the standards for receiving benefits are less demanding than the requirements for accidental disability." *Rossi v. Employees' Ret. Sys.*, 895 A.2d 106, 112 (R.I. 2006).

Contrary to Jencks's assertion in his Memorandum of Law ("Jencks Memo" at p. 2), R.I.G.L. § 45-21.2-9(e) does not bring fire fighters employed by the state within the coverage of § 45-21.2-9 generally, but only as it relates to occupational cancer. Section 45-21.2-9(e) provides:

Any fire fighter, including one employed by the state, or a municipal firefighter employed by a municipality that participates in the optional retirement for police officers and fire fighters as provided in this chapter, who is unable to perform his or her duties in the fire department by reason of a disabling occupational cancer that develops or manifests itself during a period while the fire fighter is in the service of the department, and any retired member of the fire force of any city or town who develops occupational cancer, is entitled to receive an occupational cancer disability and he or she is entitled to all of the benefits provided for in this chapter, chapters 19, 19.1, and 21 of this title and chapter 10 of title 36 if the fire fighter is employed by the state.

R.I.G.L. § 45-21.2-9(e)(emphasis added). Jencks has not claimed that he has occupational cancer. SOF, ¶ 2.

As to retirement under the provisions of § 45-21.2-9 generally, it provides:

Any member in active service, regardless of length of service, is entitled to an accidental disability retirement allowance. Application for the allowance is made by the member or on the member's behalf, stating that the member is physically or mentally incapacitated for further service as the result of an injury or illness sustained while in the performance of duty and certifying to the time, place, and conditions of the duty performed by the member that resulted in the alleged disability and that the alleged disability was not the result of the willful negligence or misconduct on the part of the member, and was not the result of age or length of service, and that the member has not attained the age of sixty-five (65). The application shall be made within eighteen (18) months of the alleged accident from which the injury has resulted in the member's present disability and shall be accompanied by an accident report and a physician's report certifying to the disability. If the member was able to return to his or her employment and subsequently reinjures or aggravates the same injury or illness, the member shall make another application within eighteen (18) months of the reinjury or aggravation which shall be accompanied by a physician's report certifying to the reinjury or aggravation causing the disability. If a medical examination made by three (3) physicians engaged by the retirement board, and other investigations as the board may make, confirms the statements made by the member, the board may grant the member an accidental disability retirement allowance.

R.I.G.L. § 45-21.2-9(a)(emphasis added). As such, the statute contemplates that the applicant for benefits under § 45-21.2-9 be a "member in active service."

Section 45-21.2-2 provides, in part, that: "As used in this chapter, the words defined in § 45-21-2 have the same meanings stated in that section" R.I.G.L. § 45-21.2-2. It also provides that: "The retirement board shall determine who are employees within the meaning of this chapter;" *Id.* Accordingly, one looks to § 45-21-2 for the meanings of "active member" and "member." Section 45-21-2 provides the following definitions:

(2) "Active member" means any employee of a participating municipality as defined in this section for whom the retirement system is currently receiving regular contributions pursuant to §§ 45-21-41, 45-21-41.1 or 45-21.2-14.

(12) "Member" means any person included in the membership of the retirement system as provided in § 45-21-8.¹

(20) "Service" means service as an employee of a municipality of the State of Rhode Island...

R.I.G.L. § 45-21-2.

As an "active member" is defined by R.I.G.L. 45-21-2(2) as "any employee of a participating municipality as defined in this section for whom the retirement system is currently receiving regular contributions pursuant to §§ 45-21-41, 45-21-41.1 or 45-21.2-14," Jencks is not an "active member" within the meaning of the statute. "At all relevant times, Jencks's employee and employer contributions were paid and processed by ERSRI in accordance with the provisions of R.I.G.L. §§ 36-10-1, 36-10-1.1, and 36-10-2, in connection with ERSRI's administration of the retirement system established in R.I.G.L. § 36-8-2." SOF, ¶ 9. "At no time has Jencks contributed, nor have employer contributions been received, in accordance with the

¹ A copy of R.I.G.L. § 45-21-8 is attached hereto as Exhibit B. It addresses membership in the system at length, but none of its provisions extend membership to fire fighters employed by the state.

provisions of R.I.G.L. § 45-21.2-14, to the plans established in R.I.G.L. §§ 45-21-32 and 45-21.2-3." SOF, ¶ 10. As such, Jencks has never been a member of MERS.

2. **Jencks is not entitled to be paid a pension from a trust to which he did not contribute.**

As Jencks is not a member of MERS, his contributions, and those of his employer have been calculated in accordance with R.I.G.L. §§ 36-10-1 and 36-10-2. Pursuant to § 36-10-1, employee contributions are set at different percentages of compensation based upon certain variables.² The rates of contribution under Chapter 21.2 of Title 45 are substantially different.³ R.I.G.L. § 45-21.2-14. As such, it would be actuarially unsound to grant an accidental disability pension to Jencks pursuant to § 45-21.2-9 when his contributions, and those of his employer, were calculated under different actuarial assumptions and were paid into a separate trust.

Moreover, the benefits Jencks seeks are not supported by the contributions he and his employer have made. R.I.G.L. §36-10-15 provides for either 50% or 66 and 2/3% of compensation as an accidental disability benefit, depending on whether the member was disabled from any employment, or disabled only from his or her own job. There is no such distinction in §45-21.2-9, *i.e.*, a member entitled to an accidental disability pension receives a full 66 and 2/3% benefit, without reduction based on ability to perform alternative employment. The heightened municipal benefit is supported by the heightened municipal (police and fire) contribution. As Jencks at all times contributed as a state employee, he is not entitled to the benefits available to a municipal public safety employee, who had contributed as statutorily required.

² A copy of R.I.G.L. § 36-10-1 is attached as Exhibit C.

³ A copy of R.I.G.L. § 45-21.2-14 is attached as Exhibit D.

3. **Section 45-19-1(j)(2) does not create a right of appeal to the Workers' Compensation Commission.**

Jencks appears to argue that Section 45-19-1(j)(2) creates a right of an appeal to the Workers' Compensation Commission. Jencks Memo, p. 1. That subsection is inartfully drafted.

It provides:

(2) A person who so applies shall continue to receive injured on duty payments, and the right to continue to receive IOD payments of a person who so applies shall terminate in the event of a final ruling of the workers compensation court allowing accidental disability benefits. Nothing herein shall be construed to limit or alter any and all rights of the parties with respect to independent medical examination or otherwise, as set forth in the applicable collective bargaining agreement.

R.I.G.L § 45-19-1(j)(2) (emphasis added). While it is clear that the intent was to provide that once accidental disability pension benefits commenced, injured-on-duty benefits would cease, the reference to a final ruling of the workers' compensation court is completely unnecessary. Clearly the statute should not be read to require the payment of IOD benefits until a final ruling of the Workers' Compensation Court in all cases, regardless of whether or not benefits had earlier been granted.

When construing a statute, the ultimate goal is to give effect to the purpose of the act as intended by the Legislature. *Mendes v. Factor*, 41 A.3d 994, 1002 (R.I. 2012)(citations omitted). As a sub-goal, one must determine and effectuate the legislative intent and attribute to the enactment the most consistent meaning. *Id.* When the language of a statute is clear and unambiguous, one gives the words of the enactment their plain and ordinary meaning. *Id.* The plain meaning approach, however, is not the equivalent of myopic literalism, and it is entirely proper to look to the sense and meaning fairly deducible from the context. *Id., citations and quotations omitted.* Therefore, the entire statute as a whole must be considered in the context of

the entire statutory scheme, not as if each section were independent of all other sections. *Id.*, *citation omitted*. Under no circumstances will a statute be construed to reach an absurd result. *Id.*, (citing *Kaya v. Partington*, 681 A.2d 256, 261 (R.I. 1996)). Construing § 45-19-1(j)(2) to provide a right of appeal to the Workers' Compensation Court for a state employee, such as Jencks, would be absurd, as the reference to the Workers' Compensation Court makes no sense in the larger context of the statute.

It is beyond cavil that an application for an accidental disability pension goes to the Retirement System, not the Workers' Compensation Court. It is entirely possible that upon its first review, the Subcommittee could recommend approval of an application, and that the Retirement Board could accept that recommendation. Reading § 45-19-1(j)(2) literally would require that injured-on-duty payments continue unless there were a final ruling of the Workers' Compensation Court. Where an accidental disability pension was granted by the Retirement Board without the need for an appeal to the Workers' Compensation Court, however, no appeal is required. The statute should not be read as to require such an absurd result as an appeal even when benefits were granted. It is equally an absurd result to posit that the mention of the Workers' Compensation Court in § 45-19-1(j)(2) creates a right of appeal to the Workers' Compensation Court for any individual who may be entitled to injured-on-duty pay, whether a municipal employee or not.

As the statutes make clear, the disability retirement provisions of R.I.G.L. § 45-21.2-9, with the exception of those provisions relating to occupational cancer in fire fighters, apply to municipal employees. The Retirement System's interpretations of R.I.G.L. §§ 45-21.2-9 and 36-10-15 are entitled to substantial deference, even if the agency's interpretation is not the only permissible interpretation that could be applied. See *Lyman v. ERSRI*, 693 A.2d 1030, 1031 (R.I.

1997). The Rhode Island Supreme Court has consistently held that an administrative agency will be accorded great deference in interpreting a statute whose administration and enforcement have been entrusted to the agency. *See Town of Richmond v. R.I. Dep't of Env'tl. Mgmt.*, 941 A.2d 151, 157 (R.I. 2008).

In Chapter 8 of Title 36, the Legislature vested "the general administration and the responsibility for the proper operation of the retirement system" of Rhode Island in the Retirement Board. R.I.G.L. §36-8-3. The Retirement Board has been endowed by the Legislature with a broad grant of authority over the state retirement system. *See Iselin v. Ret. Bd. of the Emples. Ret. Sys.*, R.I. Super. LEXIS 75, *aff'd* at 943 A.2d 1045 (R.I. 2008), *quoting Perotti v. Solomon*, 657 A.2d 1045, 1047-48 (R.I. 1995). "The retirement board [] possesses the power to 'establish rules and regulations' for the administration and transaction of the retirement system and may 'perform other such functions as are required' for the administration of the retirement system." *Perotti*, 657 A.2d at 1048, *quoting* R.I.G.L. § 36-8-3. The Retirement System routinely interprets the statutes and regulations it has been entrusted with administering, including R.I.G.L. §§ 45-21.2-9 and 36-10-15, and has been entirely reasonable in its interpretation of the statutes to determine that Jencks is not entitled to have his disability application determined pursuant to §45-21.2-9, but rather that he should be treated as a state employee pursuant to Title 36 of the General Laws.

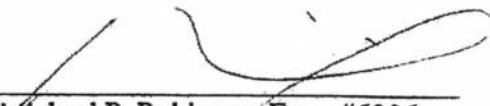
Conclusion

For all of the reasons set forth above, the decision of the Disability Subcommittee to consider Jencks's application for accidental disability pursuant to R.I.G.L. §§ 36-10-14 and 36-10-15 should be upheld.

Respectfully submitted,

THE EMPLOYEES' RETIREMENT
SYSTEM OF THE STATE OF
RHODE ISLAND

By its attorneys,



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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of July 2018 a copy of the within Memorandum was mailed to John M. Harnett, Esq., LOVETT SCHEFRIN HARNETT, LTD., 300 Centerville Road, Summit East – Suite 200, Warwick, RI 02886

Allen Y. Chonetta

Exhibit A

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

EMPLOYEES' RETIREMENT SYSTEM OF
THE STATE OF RHODE ISLAND

In re:

DAVID C. JENCKS, JR.

Before Hearing Officer
Raymond Marcaccio, Esq.

STIPULATION OF FACTS

It is hereby agreed that the following facts are stipulated to by the parties for purposes of the administrative challenge brought by David C. Jencks, Jr. ("Jencks"):

1. Jencks became a member of the Employees' Retirement System of the State of Rhode Island in or about January of 2004, upon becoming employed as a Quonset Firefighter with the Executive Military Staff of the State of Rhode Island. His membership application is dated January 29, 2004, and indicates with respect to his employee status that he is a "state employee". See attached Exhibit A.
2. Jencks submitted an Application for Accidental Disability Retirement for State Employees/Teachers on August 30, 2016, with the stated medical reason for disability being: [REDACTED] which he alleged occurred on April 19, 2015. See Disability Retirement Application, attached hereto as Exhibit B, and Incident/Injury Report form, attached hereto as Exhibit C.
3. At the time he filed his disability pension application, Jencks was receiving Injured on Duty benefits pursuant to the provisions of R.I.G.L. §45-19-1.
4. On September 28, 2016, counsel for Jencks sent a letter to counsel for ERSRI, arguing that Jencks was entitled to have his disability pension application processed under the provisions of R.I.G.L. §45-21.2-9. See attached Exhibit D.
5. In connection with his application, Jencks was evaluated by three independent medical examiners: [REDACTED]
6. On September 13, 2017, the Retirement Board, acting upon the recommendation of its Disability Subcommittee, voted to approve Jencks' application for an accidental

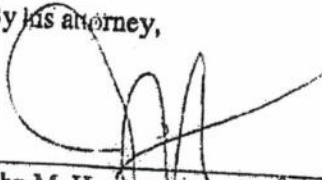
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disability pension at the 50% benefit level, pursuant to the provisions of R.I.G.L. §36-10-15(b). The Disability Subcommittee found Jencks to be permanently and totally disabled from service, but not permanently and totally disabled from any employment consistent with R.I.G.L. §36-10-15(c) and §28-33-17(b). See attached Exhibit E.

7. On October 5, 2017, counsel for Jencks sent a letter to the Executive Director of ERSRI, Frank J. Karpinski, requesting an appeal/reconsideration hearing in accordance with ERSRI's applicable regulations. See attached Exhibit F. This letter reiterated Jencks' claim that he is entitled to have his application processed under the provisions of R.I.G.L. §45-21.2-9, with the differing benefits and procedural remedies associated therewith.
8. At the November 3, 2017 Disability Subcommittee meeting, the Subcommittee voted to refer the legal challenge raised by Jencks regarding the statutory framework for processing of his disability pension application, to an independent Hearing Officer for a recommendation to the Retirement Board. The matter was thereafter assigned to the instant Hearing Officer. See attached Exhibit G.
9. At all relevant times, Jencks' employee and employer contributions were paid and processed by ERSRI in accordance with the provisions of R.I.G.L. §§36-10-1, 36-10-1.1, and 36-10-2, in connection with ERSRI's administration of the retirement system established in R.I.G.L. §36-8-2.
10. At no time has Jencks contributed, nor have employer contributions been received, in accordance with the provisions of R.I.G.L. §45-21.2-14, to the plans established in R.I.G.L. §§45-21-32 and 45-21.2-3.

David C. Jencks

By his attorney,


John M. Harnett, Esq. (# 2672)
Lovett Scheffrin Harnett, Ltd.
300 Centerville Road, Suite 200 East
Warwick, RI 02886

Employees' Retirement
System of the State of Rhode Island
By its attorneys,



Michael P. Robinson, Esq. (#6306)
Shechtman Halperin Savage, LLP
1080 Main Street
Pawtucket, RI 02860

Exhibit B

R.I. Gen. Laws § 45-21-8

Current through Chapter 46 of the January 2018 Session but not including all corrections and changes made by the Director of Law Revision. The final official version of statutes affected by 2018 legislation will appear on Lexis Advance in November 2018.

General Laws of Rhode Island > TITLE 45. TOWNS AND CITIES > CHAPTER 21. RETIREMENT OF MUNICIPAL EMPLOYEES

§ 45-21-8. Membership in system

Membership in the retirement system does not begin before the effective date of participation in the system as provided in § 45-21-4, and consists of the following:

- (a) Any employee of a participating municipality as defined in this chapter, who becomes an employee on and after the effective date of participation, shall, under contract of his or her employment, become a member of the retirement system; provided, that the employee is not receiving any pension or retirement allowance from any other pension or retirement system supported wholly or in part by a participating municipality, and is not a contributor to any other pension or retirement system of a participating municipality. Any employee who is elected to an office in the service of a municipality after the effective date and prior to July 1, 2012, has the option of becoming a member of the system, which option must be exercised within sixty (60) days following the date the employee assumes the duties of his or her office, otherwise that person is not entitled to participate under the provisions of this section;
- (b) Any employee or elected official of a participating municipality in service prior to the effective date of participation, who is not a member of any other pension or retirement system supported wholly or in part by a participating municipality, and who does not notify the retirement board in writing before the expiration of sixty (60) days from the effective date of participation that he or she does not wish to join the system, shall automatically become a member; and
- (c) Any employee of a participating municipality in service prior to the effective date of participation, who is a member of any other pension or retirement system supported wholly or in part by a participating municipality on the effective date of participation of their municipality, who then or thereafter makes written application to join this system, and waives and renounces all accrued rights and benefits of any other pension or retirement system supported wholly or in part by a participating municipality, becomes a member of this retirement system and shall not be required to make contribution under any other pension or retirement system of a participating municipality, anything to the contrary notwithstanding.
- (d) Notwithstanding the provisions of this section, present firefighters employed by the town of Johnston shall establish a pension plan separate from the state of Rhode Island retirement system. If the town of Johnston is thirty (30) days or more late on employer or employee

contributions to the pension plan, the auditor general is authorized to redirect any Johnston funds to cover the shortfall or to deduct that amount from any moneys due the town from the state for any purpose other than for education. Disability determinations of present firefighters shall be made by the state retirement board, subject to the provisions of § 45-21-19, at the town of Johnston's expense. All new firefighters hired by the town of Johnston shall become members of the state retirement system.

(e) Notwithstanding the provisions of this section, any city of Cranston employees who are presently members of Teamsters Local Union No. 251, hired between the dates of July 1, 2005, and June 30, 2010, inclusive, and who are currently members of the retirement system established by this chapter may opt out of said retirement system and choose to enroll in a defined contribution plan (i.e., a 403(b) plan or equivalent thereof) established by the city of Cranston.

(f) Notwithstanding the provisions of this section, any city of Cranston employees who are presently members of the Laborers International Union of North America Local 1322 hired between the dates of July 1, 2008, and June 30, 2013, inclusive, and who are currently members of the retirement system established by this chapter may opt out of said retirement system and choose to enroll in a defined contribution plan (i.e., a 403(b) plan or equivalent thereof) established by the city of Cranston.

(g) Notwithstanding the provisions of this section, any city of Cranston employees who will be members of Teamsters Local Union No. 251, hired after June 30, 2010, shall be enrolled in a defined contribution plan (i.e., a 403(b) plan or equivalent thereof) established by the city of Cranston and shall not be a member of the retirement system established by this chapter.

(h) Notwithstanding the provisions of this section, any city of Cranston employees who are presently members of the Laborers International Union of North America Local 1322 hired after April 23, 2013, shall be enrolled in a defined contribution plan (i.e., 403(b) plan or equivalent thereof) established by the city of Cranston and shall not be a member of the retirement system established by this chapter.

(i) Notwithstanding the provisions of this section, any city of Cranston employees defined in (e) and (f) of this section shall be precluded from purchase of service credit for time served on or after July 1, 2010, while participating in the defined contribution plan (i.e., a 403(b) plan or equivalent thereof) established by the city of Cranston should the member cease employment with the city of Cranston or Teamsters Local Union No. 251 and re-enter the system with another participating employer who has accepted the provisions as defined, in § 45-21-4.

(j) Notwithstanding the provisions of this section, any town of Middletown employees, who will be members of the Teamsters Local Union No. 251 bargaining unit, hired after June 30, 2012, and any town of Middletown employees who are employed as full-time civilian dispatchers, hired after June 30, 2012, and any town of Middletown employees who are not affiliated with any recognized collective bargaining representative or union hired after June 30, 2012, shall be enrolled in a defined contribution plan (i.e., a 403(b) plan or equivalent thereof) established by the town of Middletown and shall not be members of the retirement system established by this chapter. Said town of Middletown employees defined herein shall be precluded from the purchase of service credit for time served on or after July 1, 2012, while participating in the defined contribution plan (i.e., a 403(b) plan or equivalent thereof)

established by the town of Middletown should the member cease employment with the town of Middletown or in the Teamsters Local Union No. 251 bargaining unit and re-enter the system with any participating employer who has accepted the provisions as defined in § 45-21-4.

(k) Notwithstanding the provisions of this section, any town of Middletown employees, who will be members of the Middletown Municipal Employees Association NEARI Local 869 bargaining unit hired after June 30, 2012, shall be enrolled in a defined contribution plan (i.e., a 403(b) plan or equivalent thereof) established by the town of Middletown and shall not be members of the retirement system established by this chapter. Said town of Middletown employees defined herein shall be precluded from the purchase of service credit for time served on or after July 1, 2012, while participating in the defined contribution plan (i.e., a 403(b) plan or equivalent thereof) established by the town of Middletown should the member cease employment with the town of Middletown or in the Middletown Municipal Employees Association NEARI Local 869 bargaining unit and re-enter the system with any participating employer who has accepted the provisions as defined in § 45-21-4.

(l) Notwithstanding the provisions of this section, any Cranston public school employees who will be members of National Association of Government Employees (NAGE), Local RI-153, hired after June 30, 2012, shall be enrolled in a defined contribution plan (i.e., a 401(a) plan or equivalent thereof) established by the Cranston school department and shall not be a member of the retirement system established by this chapter.

(m) Notwithstanding the provisions of this section, any Cranston public school employees defined in subsection (h) shall be precluded from the purchase of service credit for time served on or after July 1, 2012, while participating in the defined contribution plan (i.e., a 401(a) plan or equivalent thereof) established by the Cranston public schools should the member cease employment with the Cranston public schools or National Association of Government Employees (NAGE), Local RI-153 and re-enter the system with another participating employer who has accepted the provisions as defined in § 45-21-4.

(n) Notwithstanding the provisions of this section, the chief of police for the city of Cranston who was hired on or about September 2014, shall be enrolled in a defined contribution plan (i.e., 401(a) plan or any equivalent thereof) established by the city of Cranston, and shall not be a member of the retirement system established by this chapter.

History

P.L. 1951, ch. 2784, § 6; G.L. 1956, § 45-21-8; P.L. 1989, ch. 54, § 2; P.L. 1991, ch. 377, § 1; P.L. 1999, ch. 490, § 1; P.L. 1999, ch. 513, § 1; P.L. 2009, ch. 310, § 49; P.L. 2010, ch. 275, § 1; P.L. 2010, ch. 286, § 1; P.L. 2011, ch. 408, § 11; P.L. 2011, ch. 409, § 11; P.L. 2012, ch. 437, § 1; P.L. 2012, ch. 440, § 1; P.L. 2012, ch. 472, § 1; P.L. 2012, ch. 475, § 1; P.L. 2013, ch. 444, § 1; P.L. 2013, ch. 472, § 1; P.L. 2014, ch. 503, § 1; P.L. 2014, ch. 545, § 1; P.L. 2017, ch. 456, § 1; P.L. 2017, ch. 465, § 1.

Annotations

Notes

COMPILER'S NOTES.

P.L. 2010, ch. 275, § 1, and P.L. 2010, ch. 286, § 1, enacted identical amendments to this section.

P.L. 2011, ch. 408, § 11, and P.L. 2011, ch. 409, § 11 enacted identical amendments to this section.

This section was amended by four acts (P.L. 2012, ch. 437, § 1; P.L. 2012, ch. 440, § 1; P.L. 2012, ch. 472, § 1; P.L. 2012, ch. 475, § 1) passed by the 2012 General Assembly. Since the changes are not in conflict with each other, this section is set out as amended by all four acts.

P.L. 2012, ch. 437, § 1, and P.L. 2012, ch. 472, § 1 enacted identical amendments to this section.

P.L. 2012, ch. 440, § 1, and P.L. 2012, ch. 475, § 1 enacted identical amendments to this section.

P.L. 2013, ch. 444, § 1, and P.L. 2013, ch. 472, § 1 enacted identical amendments to this section.

P.L. 2014, ch. 503, § 1, and P.L. 2014, ch. 545, § 1 enacted identical amendments to this section.

P.L. 2017, ch. 456, § 1, and P.L. 2017, ch. 465, § 1 enacted identical amendments to this section.

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End of Document

Exhibit C

R.I. Gen. Laws § 36-10-1

Current through Chapter 46 of the January 2018 Session but not including all corrections and changes made by the Director of Law Revision. The final official version of statutes affected by 2018 legislation will appear on Lexis Advance in November 2018.

General Laws of Rhode Island > TITLE 36. PUBLIC OFFICERS AND EMPLOYEES > CHAPTER 10. RETIREMENT SYSTEM -- CONTRIBUTIONS AND BENEFITS

§ 36-10-1. Member contributions -- Deduction from compensation

(a) Prior to July 1, 2012, each member of the retirement system shall contribute an amount equal to eight and three-quarters percent (8.75%) of his or her compensation as his or her share of the cost of annuities, benefits, and allowances. Effective July 1, 2012, each member of the retirement system shall contribute an amount equal to three and three quarters percent (3.75%) of his or her compensation, except for correctional officers as defined in § 36-10-9.2 who shall contribute an amount equal to eight and three quarters percent (8.75%) of his or her compensation. Effective July 1, 2015, each member of the retirement system, except for correctional officers as defined in § 36-10-9.2, with twenty (20) or more years of total service as of June 30, 2012 shall contribute an amount equal to eleven percent (11%) of compensation. The contributions shall be made in the form of deductions from compensation.

(b) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and receipt of his or her full compensation and payment of compensation, less the deductions, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by the person during the period covered by the payment except as to the benefit provided under this chapter.

History

P.L. 1936, ch. 2334, § 5; G.L. 1938, ch. 18, § 5; P.L. 1947, ch. 1971, § 3; impl. am. P.L. 1950, ch. 2614, § 1; G.L. 1956, § 36-10-1; P.L. 1960, ch. 20, § 1; P.L. 1964, ch. 240, § 1; P.L. 1965, ch. 231, § 1; P.L. 1968, ch. 152, § 1; P.L. 1970, ch. 112, art. 3, § 1; P.L. 1976, ch. 289, § 3; P.L. 1978, ch. 168, § 1; P.L. 1979, ch. 332, § 2; P.L. 1985, ch. 331, § 2; P.L. 1988, ch. 509, § 1; P.L. 1989, ch. 227, § 1; P.L. 1990, ch. 360, § 1; P.L. 1995, ch. 370, art. 15, § 2; P.L. 2011, ch. 408, § 7; P.L. 2011, ch. 409, § 7; P.L. 2015, ch. 141, art. 21, § 2.

Annotations

Notes

COMPILER'S NOTES.

P.L. 2011, ch. 408, § 7, and P.L. 2011, ch. 409, § 7 enacted identical amendments to this section.

Case Notes

1. IN GENERAL.
2. CONSTITUTIONALITY.

NOTES TO DECISIONS

1. IN GENERAL.

When viewed collectively, the precise language of the Retirement System A is indefinite as to whether the statutes amount to a contract. *National Educ. Assoc-Rhode Island ex rel. Scigulinsky v. Retirement Bd.*, 890 F. Supp. 1143 (D.R.I. 1995).

2. CONSTITUTIONALITY.

Sections 36-8-1(2), 36-10-1, 36-10-2, 36-10-7, 36-10-9.1, and 36-10-10.1 are not unconstitutional although these provisions allow state legislators to receive pension benefits beyond the daily stipend specified in art. VI, § 3 of the *Rhode Island Constitution. Kass v. Retirement Bd. of the Employees' Retirement Sys.*, 567 A.2d 358 (R.I. 1989).

Research References & Practice Aids

CROSS REFERENCES.

Application to teachers, *§§ 16-16-23, 16-17-1.*

Contributions by teachers, *§ 16-16-22.*

Definition, *§ 36-8-1.*

COLLATERAL REFERENCES.

Employer's liability, under state law, for fraud or misrepresentation inducing employee to take early retirement. *14 A.L.R. 5th 537.*

General Laws of Rhode Island

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Exhibit D

R.I. Gen. Laws § 45-21.2-14

Current through Chapter 46 of the January 2018 Session but not including all corrections and changes made by the Director of Law Revision. The final official version of statutes affected by 2018 legislation will appear on Lexis Advance in November 2018.

General Laws of Rhode Island > TITLE 45. TOWNS AND CITIES > CHAPTER 21.2. OPTIONAL RETIREMENT FOR MEMBERS OF POLICE FORCE AND FIRE FIGHTERS

§ 45-21.2-14. Contributions

- (a) Each member shall contribute an amount equal to seven percent (7%) of the salary or compensation earned or accruing to the member provided that effective July 1, 2015 each member shall contribute an amount equal to nine percent (9%) of the salary or compensation earned or accruing to the member. Special compensation or additional fees shall not be considered as compensation for contribution purposes.
- (b) Deductions are made in accordance with § 45-21-14 and credited in accordance with § 45-21-43.
- (c) Each municipality shall make contributions to the system to provide the remainder of the obligation for retirement allowances, annuities, and other benefits provided in this section, after applying the accumulated contribution of members, interest income on investments, and other accrued income. The contribution shall be compiled in accordance with §§ 45-21-42 -- 45-21-44, except that contributions for the first five (5) years of the system shall likewise be determined by the board.
- (d) Provided, that members of the South Kingstown police department, beginning July 1, 1985 and until June 30, 2012, contribute an amount equal to eight percent (8%) of salary or compensation or additional fees are not considered as compensation for retirement purposes. For service on and after July 1, 2012, a member of the South Kingstown police department shall make contributions in accordance with paragraph (a) above.
- (e) Provided, further, that for service on or prior to June 30, 2012, members of the City of Cranston fire department hired after July 1, 1995, beginning July 1, 1995, contribute an amount equal to ten percent (10%) of their weekly salary; and those members of the City of Cranston fire department with five (5) years or less of service effective July 1, 1995, have the option to either remain in the City of Cranston pension plan to which they belonged prior to the adoption of local ordinance by the Cranston city council as stated in § 45-21.2-22 or contribute to the State of Rhode Island optional twenty (20) year retirement on service allowance an amount equal to ten percent (10%) of their weekly salary commencing July 1, 1995. The City of Cranston may request and the retirement board may authorize additional members of the City of Cranston fire department hired after July 1, 1987, the option to either remain in the City of Cranston pension plan to which they belonged prior to the adoption of local ordinance by the Cranston city council as stated in § 45-

21.2-22 or contribute to the State of Rhode Island optional twenty (20) year retirement on service allowance an amount equal to ten percent (10%) of their weekly salary beginning on a date specified by the retirement board. For service on and after July 1, 2012, a member of the City of Cranston fire department shall make contributions in accordance with paragraph (a) above and a member's benefit shall be calculated in accordance with subsection 45-21.2-22(b).

(f) Further, provided, that for service on and prior to June 30, 2012, members of the City of Cranston police department hired after July 1, 1995, beginning July 1, 1995, contribute an amount equal to ten percent (10%) of their weekly salary; and those members of the City of Cranston police department with five (5) years or less of service effective July 1, 1995, have the option to either remain in the City of Cranston pension plan to which they belonged prior to the adoption of local ordinance by the Cranston city council as stated in § 45-21.2-22 or contribute to the State of Rhode Island optional twenty (20) year retirement on service allowance an amount equal to ten percent (10%) of their weekly salary commencing July 1, 1995. The City of Cranston may request and the retirement board may authorize additional members of the City of Cranston police department hired after July 1, 1987, the option to either remain in the City of Cranston pension plan to which they belonged prior to the adoption of local ordinance by the Cranston city council as stated in § 45-21.2-22 or contribute to the State of Rhode Island optional twenty (20) year retirement on service allowance an amount equal to ten percent (10%) of their weekly salary beginning on a date specified by the retirement board. For service on and after July 1, 2012, a member of the City of Cranston police department shall make contributions in accordance with paragraph (a) above and a member's benefit shall be calculated in accordance with subsection 45-21.2-22(b).

History

P.L. 1968, ch. 230, § 1; P.L. 1983, ch. 330, § 1; P.L. 1996, ch. 374, § 1; P.L. 2000, ch. 454, § 2; P.L. 2011, ch. 408, § 12; P.L. 2011, ch. 409, § 12; P.L. 2015, ch. 141, art. 21, § 27.

Annotations

Notes

COMPILER'S NOTES.

P.L. 2011, ch. 408, § 12, and P.L. 2011, ch. 409, § 12 enacted identical amendments to this section.

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February 6, 2018

Raymond A. Marcaccio, Esq.
Oliverio & Marcaccio LLP
55 Dorrance Street
Suite 400
Providence, RI 02903

RE: David Jencks, Jr.

Dear Mr. Marcaccio:

On April 19, 2015, David Jencks was injured in the course of his employment as a firefighter for the State of Rhode Island. He is receiving injury on duty (IOD) pay pursuant to R.I.G.L. §45-19-1, as referenced by the enclosed Memorandum of Agreement. On September 13, 2016, his employer sent him a letter (a copy of which is enclosed) telling him to apply for an accidental disability pension as dictated by §45-19-1(j)(1) & (2). He was warned that his failure to comply with that instruction would result in the termination of his IOD pay on October 19, 2016.

Jencks filed his application with the office of the ERSRI on August 30, 2016 (see enclosed copy of application). Soon thereafter he was told by a senior administrative aide, Gloria Bernstein, that his application would not be processed further unless he initialed the certification sections of the form that authorized his application to be processed through R.I.G.L. §36-10-15 only. Jencks refused, based upon the facts listed below, and the board processed his application under Title 36.

The retirement board granted Jencks' accidental disability pension for partial disability under Title 36 rather than Title 45. For all firefighters, Title 45 provides a greater substantive benefit and an additional appellate remedy than Title 36. The general assembly found these remedies necessary

February 6, 2018
David Jencks
Page 2 of 2

to compensate all firefighters differently than other State and Municipal employees since firefighters are regularly exposed to greater dangers in the course of protecting the general public. City of East Providence v. IAF Local, 982 A.2d 1281.

The board's decision provided Jencks with a monthly rate of only 50% of his prior wage (instead of the usual 65% awarded to fighters) and it allowed him a limited appeal to the Superior Court for an Administrative Procedures Act review. The appropriate award would have allowed Jencks an appeal, if necessary, to the Workers' Compensation Court for a de novo review.

Jencks contends that all firefighters, State as well as Municipal, are entitled to equal treatment in the pursuit of an accidental disability pension, which raises the issue:

Does the retirement board have the right to distinguish state firefighters from all other firefighters entitled to an accidental disability pension under Title 45?

Jencks is entitled to have his application processed under R.I.G.L. §45-21.2-9. This is because §45-19-1 is addressed to all firefighters "...of any city, town, fire district or the state of Rhode Island". (Emphasis provided). Additionally, §45-21.1-9 (e) refers to "Any firefighter, including one employed by the state..." Labbadia v. State of Rhode Island 513 A.2d 18 (1986).

Jencks asks that you consider these facts and the law as quoted and render a decision as to the applicability of Title 45 to Jencks' application for an accidental disability pension.

Respectfully presented,
LOVETT SCHEFFIN HARNETT, LTD.

JOHN M. HARNETT, ESQ.

JMH/crm
Enclosures
Cc: Michael P. Robinson, Esq.
Cc: Frank Karpinski



Employees' Retirement System of Rhode Island

ERSRI Board:

November 15, 2017

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General Treasurer
Chair

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Frank J. Karpinski
Executive Director

John M. Harnett, Esq.
LOVETT SCHEFRIN HARNETT, LTD.
300 Centerville Road
Summit East – Suite 200
Warwick, RI 02886

RE: Request for a Hearing – David Jencks, Jr.

Dear Attorney Harnett:

In accordance with Rhode Island General Laws §36-8-3 and the Rules of Practice and Procedures for Hearings, your request for a hearing has been assigned to:

HEARING OFFICER:

Raymond A. Marcaccio Esq.

Phone: (401) 861-2900

LOCATION:

Employees' Retirement System of Rhode Island

50 Service Avenue, 2nd Floor

Warwick, RI 02886

You should contact the hearing officer to arrange a mutually convenient time to hold the hearing.

An applicant may represent him/her self at this Hearing or the case may be presented by a lawyer. Consistent with Rhode Island General Law §11-27-2, entitled "Practice of law" defined, any person accompanying the applicant who is not a lawyer cannot present the applicant's case to the Hearing Officer.

Should you have any additional questions, please do not hesitate to contact me at (401) 462-7608.

Sincerely,

Roxanne Donoyan
Assistant to the Executive Director

cc: David Jencks, Jr.
Raymond A. Marcaccio, Esq.
Michael P. Robinson, Esq.