

IN THE SUPREME COURT OF MISSISSIPPI

**PUBLIC EMPLOYEES' RETIREMENT
SYSTEM OF MISSISSIPPI (PERS)**

APPELLANT

VERSUS

CAUSE NO. 2007-SA-00109

MARY CARD

APPELLEE

REPLY BRIEF OF THE APPELLANT

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APPELLANT'S REPLY BRIEF

**I. THE DECISION OF THE CIRCUIT COURT WHEREIN IT
SUBSTITUTED ITS DECISION FOR THAT OF THE BOARD OF
TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM
SHOULD BE REVERSED AS THE DECISION OF THE BOARD IS
SUPPORTED BY SUBSTANTIAL EVIDENCE AND IS NEITHER
ARBITRARY NOR CAPRICIOUS.**

PERS relies on its argument in its initial brief setting forth the facts that support its decision to deny both regular and hurt-on-the-job disability benefits to Ms. Card.

Ms Card's initial application was for hurt-on-the-job disability benefits, however, because Ms. Card had over four years of service PERS went on to consider whether Ms. Card qualified for regular disability.

Miss. Code Ann. Section 25-11-113(1)(a)(Supp. 2007) which relates to disability retirement provides, in relevant part:

Upon the application of a member or his employer, any active member in state service who has at least four (4) years of membership service credit may be retired by the board of trustees on the first of the month following the date of filing such application on a disability retirement allowance, but in no event shall the disability retirement allowance commence before termination of state service, provided that the medical board, after a medical examination, shall certify that the member is mental or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and

that the member should be retired; however, the board of trustees may accept a disability medical determination from the Social Security Administration in lieu of a certification from the medical board.

Alternatively, the question before the PERS Medical Board, the Disability Appeals Committee and the PERS Board of Trustees was whether Ms. Card's claim met the statutory requirements for receipt of a disability benefit. Miss. Code Ann. Section 25-11-113(1)(a) defines disability as:

... the inability to perform the usual duties of employment or the incapacity to perform such lesser duties, if any, as the employer, in its discretion, may assign without material reduction in compensation, or the incapacity to perform the duties of any employment covered by the Public Employees' Retirement System (Section 25-11-101 et seq.) that is actually offered and is within the same general territorial work area, without material reduction in compensation.

In its analysis, the Committee stated the following in determining whether Ms. Card qualified for regular disability:

With regard to whether Ms. Card is entitled to Regular Disability which would be based on her carpal tunnel syndrome alone, **this Committee would point to the fact that according to the record, specifically, page 42, Ms. Card's actual carpal tunnel condition is "mild."** Secondly, it is obvious that Ms. Card complains of pain and numbness in her wrists, but especially her right wrist, yet **pain alone can not by itself substantiate disability.** **There must be objective findings to support the complaints of pain and Dr. Lowe has failed to document any physical findings to support Ms. Card's complaints.** He only documents her complaints. There are no notations of temperature difference, swelling, redness or the like, only the subjective complaints of pain.

Dr. Terry, while only the independent examiner, is more persuasive because he notes that he can find nothing objective to support Ms. Card's complaints of pain and numbness. It is clear that he has looked at her hands and we are not sure of that with Dr. Lowe. And again, the nerve conduction study showed only mild carpal tunnel, and certainly that level of carpal tunnel should not result in the significant amount of pain that Ms. Card alleges. Then, of course there is the Functional Capacity Evaluation where Ms. Card showed a great deal of self limiting behavior and participated fully in only 10 out of 21 tasks. Further, she told the examiner she had no intention in returning to work. According to the examiner, even with the lack of compliance with the testing, Ms. Card was able to perform 12 of the 14 tasks required by her job.

This case, like most of the cases we evaluate, is not an easy case. But it is clear that Ms. Card did not intend to return to work. She did not try her best during the Functional Capacity Evaluation. **We do not have objective evidence of carpal tunnel significant enough to warrant permanent disability.** Therefore, this Committee recommends that Ms. Card's request for disability be denied. (R. 19-20) [*Emphasis Added*]

Here again, the Committee provided a "reasoned and unbiased evaluation of the evidence." *Public Employees' Retirement System v. Cobb*, 839 So. 2d at 609. Ms. Card contends PERS decision denying her regular disability was not supported by substantial evidence because she had the following support: reports of her treating physician; as well as voice restrictions given to her by her Ear, Nose, and Throat Specialist; a vocational expert; the Manager of Employee Relations; PERS medical examiner who stated that Ms. Card's "subjective complaints of burning pain and persistent numbness/tingling are fairly impressive." (R. 162)

PERS, however, has the duty to determine which of the physicians' assessments and other documentation it should rely on in making a determination. As noted in *Public*

Employees' Retirement v. Howard, 905 So. 2d 1279, 1287 (Miss. 2005), "determining whether an individual is permanently disabled is better left to physicians, not Judges." Several physicians reviewed Ms. Card's application and medical documents. The Board of Trustees relied on the findings of fact of the Disability Appeals Committee composed of two physicians and a nurse trained to review the medical reports submitted in support of Ms. Card's claim. Further, it is within PERS discretion to determine which documents garner more weight than others. *Byrd v. Public Employees' Retirement System*, 774 So.2d 434, 438 (Miss. 2000) As to the reports of a lay person, the Mississippi Supreme Court in *Public Employees' Retirement System v. Dishmon* 797 So.2d 888, 894 (Miss. 2001) found PERS argument to be convincing that "the opinion of a lay person should not be taken as conclusive evidence of disability."

In addition, Ms. Card's employer made plans to accommodate Ms. Card upon her return to work which would have required minimal typing and handwriting, reception duties allowing flexibility of movement and more general office duties such as filing with less writing. (P. 63)

Further, as the Committee pointed out, Ms. Card failed to provide sufficient objective evidence. With regard to this issue the Committee stated:

With regard to whether Ms. Card is entitled to Regular Disability which would be based on her carpal tunnel syndrome alone, this Committee would point to the fact that according to the record, specifically, page 42, Ms. Card's actual carpal tunnel condition is "mild." Secondly, it is obvious that Ms. Card complains of pain and numbness in her wrists, but especially her right wrist, yet **pain alone can not by itself substantiate disability. There must be objective findings to support the complaints of pain and Dr. Lowe has failed to document any physical findings to support Ms. Card's complaints. He only documents her complaints. There are no notations of temperature**

difference, swelling, redness or the like, only the subjective complaints of pain. [*Emphasis Added*]

Therefore, the decision of PERS denying Ms. Card's application for regular disability is supported by substantial evidence and is neither arbitrary nor capricious.

II. RESPONSE TO CROSS-APPEAL.

THE DECISION OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM DENYING MS. CARD'S APPLICATION FOR HURT-ON-THE-JOB DISABILITY RETIREMENT IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND IS NEITHER ARBITRARY NOR CAPRICIOUS AS CARPAL TUNNEL SYNDROME DOES NOT QUALIFY AN APPLICANT FOR SUCH AN ALLOWANCE PURSUANT TO MISS. CODE ANN. § 25-11-114(6) (SUPP. 2007)

The Committee presented the following summary of the medical evidence offered by Ms. Card in support of her claim:

On August 30, 2002, Ms. Card was seen in the emergency room for complaints of right hand and wrist pain. She was placed in a splint and referred to Dr. Lowe. We have a one page report from Dr. Redmann, a Neurologist, from September 11, 2002, noting testing to both median nerves. The final impression here is that there is a demyelinating and axon loss of the right hand in a moderate degree and on the left side, it is mild in degree. Ms. Card underwent right carpal tunnel surgery on September 19, 2002. Thereafter, she underwent a release on the left side on October 10, 2002. She then was referred to physical therapy and on November 27, 2002, Dr. Lowe wrote that Ms. Card could return to work at light duty with no repetitive wrist motion. He noted her improvement. Certainly, Dr. Lowe had decided by January 15, 2003, that Ms. Card was not going to be able to return to her former job and this is reflected on his Statement of Examining Physician.

A Functional Capacity Evaluation was performed on July 22, 2003, and it was noted that Ms. Card was self limiting

in 52% of the tasks. Further, even with the self limiting behavior, Ms. Card's physical abilities matched 12/14 of the listed physical requirements of her employer. It was the opinion of the tester that Ms. Card could return to sedentary level employment. A Vocational Rehabilitation Evaluation was performed at the request of Mr. Cook and the conclusion there was that Ms. Card has sustained 100% loss of access to the labor market. No actual physical testing was performed with this. The examiner concluded that Ms. Card did not have transferable skills. This opinion was primarily based on the October 22, 2003 letter from Dr. Laurenzo to Mr. Cook, Ms. Card's attorney. In that letter, Dr. Laurenzo stated that Ms. Card's voice status would not be stable for at least six months and until that time, he was limiting her to two hours per day of a receptionist type job. Also, playing significantly in the Vocational evaluation are the notes of Dr. Lowe dated February 24, 2003 through September 18, 2003, where the doctor stated that with the symptomatic carpal tunnel, primarily of the right hand, and the fact that she had recently had bypass surgery, he did not believe she could return to work with a job requiring repetitive use of her hands and wrist. He recommended sedentary work.

Ms. Card was sent on February 19, 2004 for an Independent Evaluation performed by Dr. Terry, an orthopedist in Oxford. At the exam, Dr. Terry noted that Ms. Card showed guarding of her wrists but that she had full range of motion and no signs of bruising or warmth. While Dr. Terry did list options for Ms. Card, and assigned her a permanent impairment rating that would be necessary under the worker's compensation laws, he believed that Ms. Card is able to return to her former employment. He noted it to be unusual for Ms. Card to not be able to return to work following her surgery and that he found no objective findings which would prevent her from returning to work. He did note that she was complaining of subjective numbness and tingling and he recommended a functional capacity evaluation.

In *Public Employees' Retirement System v. Cobb*, 839 So.2d at 609-610, the Mississippi Court of Appeals stated:

The requirement of "substantial evidence" seems satisfied, however, in such instance by an appellate determination that the agency's conclusion that the claimant's evidence was so lacking or so unpersuasive that she failed to meet her burden appears a reasoned and unbiased evaluation of the evidence in the record. In that circumstance, **in something of a paradox, the lack of evidence at the agency level becomes the substantial evidence on appellate review that suggests the necessity of affirming the agency's determination.** [*Emphasis Added*]

After a thorough review of the medical records and testimony, the Committee found no proof of disability. The Committee's analysis is as follows:

Disability is the medical incapacity for further performance of duty that is likely to be permanent and the employee should be retired. Miss. Code Ann. Section 25-11-113 and 25-11-114 (1972, as amended). See, also, Regulation 45A, PERS Board of Trustees, Administration of PERS Disability Benefits. **Ms. Card has the burden of persuading this committee that she has suffered an accident or trauma that has caused the alleged disability and that disability has resulted in a permanent occupational disability.** The date that Ms. Card last worked was August 30, 2002, and that is the date this Committee will consider the last day of worked.

First, this Committee wants to note that Ms. Card is sincere and consistent in her testimony. Ms. Card has not persuaded this Committee that she is entitled to Duty Related Disability. **There is no testimony of an accident or trauma as required by the statute and interpreted by the Attorney General's office. Ms Card's counsel pleads the micro trauma theory, but that theory has never been adopted by PERS. The medical literature is now showing that carpal tunnel syndrome is not the result of micro traumas, but more likely the result of obesity, diabetes and other illnesses or conditions.** [*Emphasis Added*]

The Committee provided a "reasoned and unbiased evaluation of the evidence."

As in *Cobb*, the lack of evidence offered by Ms. Card and the in depth analysis by the

Committee is the substantial evidence necessary to support the decision to deny Ms. Card's claim for disability benefits.

Moreover, Miss. Code Ann. § 25-11-114(6) provides in pertinent part: **"Permanent and total disability resulting from a cardiovascular, pulmonary or musculo-skeletal condition that was not a direct result of a traumatic event occurring in the performance of duty shall be deemed an ordinary disability."** [*Emphasis Added*] When requested to interpret this statute, the Attorney General in MS AG Op. Walker (March 1994), 1994 WL 117329 (Miss. AG)(Exhibit 1) responded with the following:

In response to your questions, in order to qualify for line of duty disability benefits, a member's disability must be a direct result of an accident or traumatic event occurring in the performance of duty. While unable to locate a Mississippi statute or case defining the term **"traumatic event"**, it has been defined by the court of another jurisdiction as **an event in which a worker involuntarily meets with a physical object or some other external matter and the worker is a victim of a great rush of power that he himself did not bring into motion. This definition was held not to include physical injuries resulting from a slip and fall accident and physical conditions resulting from an excessive work effort.** See Kane v. Board of Trustees, 498 A.2d 1252 (N.J. 1985). The New Jersey statute at issue in Kane did not include the term 'accident', which is included in section 25-11-114. **The term 'accident' is defined in Black's Law Dictionary as a befalling; an event that takes place without one's foresight or expectation; chance; contingency; often, an undesigned and unforeseen occurrence of an afflictive or unfortunate character; casualty; mishap; as to die by an accident.** [*Emphasis Added*]

Clearly, no evidence exists that Ms. Card's carpal tunnel syndrome was the result of an accident or traumatic event as these terms are interpreted by the Attorney General, but,

rather the result of repetitive movements. Carpal tunnel syndrome may be considered a hurt-on-the-job injury for purposes of Workers' Compensation, but not for disability under PERS.

It is well documented in the medical evidence presented, by Ms. Card that she is not entitled to hurt-on-the-job disability benefits as defined by statute and PERS Regulations. The Disability Appeals Committee, as well as the Board of Trustees, as mandated by law, determines whether the claimant is unable to perform the usual duties of employment. Following a determination of disability it must then be determined whether the claimant sustained an hurt-on-the-job injury resulting in the disability.

Based on the record and the law regarding hurt-on-the-job disability, there was an overwhelming lack of evidence to support the award of disability. It is the burden of the claimant to prove she is in fact disabled as the result of an on the job injury. Ms. Card has suffered from hand and wrist problems for several years. The alleged disability she now suffers from was not the direct result of a trauma or an accident suffered on the job. The alleged disability is possibly the result of an underlying condition that became aggravated over a period of time. Moreover, as previously mentioned, Miss. Code Ann. Section 25-11-114 (6) provides that "Permanent and total disability resulting from amusculo-skeletal condition that was not the result of a traumatic event occurring in the performance of duty shall be deemed an ordinary disability". Musculoskeletal is defined as relating to muscles and the skeleton. Stedman's Medical Dictionary, 25th Edition Again, "PERS has the responsibility of examining the assessments of medical personnel and determining which ones should be relied upon in making its decision". *Johnston v. Public Employees' Retirement System*, 827 So.2d 1, 3 (Miss. App. 2002) citing *Byrd v.*

Public Employees' Retirement System, 774 So.2d 434, 438 (Miss. 2000). The record is replete with evidence that Ms. Card suffered from wrist problems long before August 30, 2002. In response to PERS's statement that there was "no testimony of an accident or trauma as required by statute," Ms Card contends that the documentary evidence is the Notice of Injury that the University filed with their worker's compensation carrier on September 17, 2002. This notice stated that Ms. Card had an injury of "carpal tunnel" to "both hands/wrists" and stated "long term typing" as the "abnormal health condition." (R. 66) This argument fails, however, as the Court of Appeals of Mississippi has held that "[t]he statutory requirements for hurt-on-the-job disability benefits are separate and distinct from those for workers' compensation benefits." *Brinston*, 706 So. 2d at 259. In *Brinston*, the court stated:

Brinston, in her brief, relies on workers' compensation benefits law to support her claim that the Board's denial of benefits was arbitrary and capricious. However, we find, as did the circuit court judge, that although workers' compensation statutes are to be interpreted liberally, there is no such legislative announcement as to the PERS benefits statute. **The statutory requirements for hurt-on-the-job disability benefits are separate and distinct from those for workers' compensation benefits. One does not depend on the other.** For instance, workers' compensation law requires only that the disability is aggravated by the injury or that the injury is a factor in the disability while in order to receive retirement disability benefits the disability must be the direct result of the injury and the (injury must be the sole cause of the disability). The fact that the Board did not employ workers' compensation rationale to determine whether PERS benefits were appropriate does not constitute arbitrary and capricious behavior on the part of the Board of Trustees.*[Emphasis Added]*

Therefore, PERS had no obligation to employ the workers' compensation rationale when considering the evidence.

The PERS Board of Trustees concluded, rightfully so, that Ms. Card, is not permanently disabled as the result of an on the job injury as defined in Miss. Code Ann. § 25-11-114. The record contains medical documents which require medical expertise in analyzing. The Medical Board is comprised of three physicians and the Disability Appeals Committee is made up of two different physicians and a nurse. These individuals certainly have the ability to analyze the testing results that are in the record as well as the ability to apply the law as written.

In *Public Employees' Retirement System v. Smith*, 880 So. 2d 348, 349 (Miss. App. 2004), Smith sought hurt-on-the-job disability benefits from the Public Employees' Retirement System. Smith was employed as a laundry worker at the Mississippi State Hospital in Whitfield, Mississippi where he claimed he was injured while lifting laundry and he felt a sharp pain in his back and reported this to his supervisor. 880 So. 2d at 349. The Court noted that Smith had a significant history of multiple back injuries, accidents and medical treatment. 880 So. 2d at 353. The *Smith* Court found there was substantial evidence to support PERS' finding that Smith's disability was not the direct result of the incident at the State Hospital. 880 So. 2d at 358.

This case should conclude in the same manner as did the *Smith* case. Ms. Card has failed to meet her burden of proving that she suffers from a disabling condition as a result of an on-the-job injury entitling her to hurt-on-the-job disability benefits under Miss. Code Ann. §25-11-114 (Supp. 2007). The decision of the Board of Trustees is supported by substantial evidence and must be upheld on appeal.

The Circuit Court erroneously granted regular disability benefits to Ms. Card while correctly denying hurt-on-the-job disability benefits to her. PERS asks that this

Court uphold the denial of hurt-on-the-job disability benefits and reverse the Circuit Court's award of regular disability benefits.

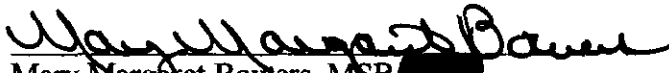
CERTIFICATE OF SERVICE

I, Mary Margaret Bowers, Attorney for the Appellant, Board of Trustees of the Public Employees' Retirement System, do hereby certify that I have this day hand delivered or mailed, by United States Mail, postage prepaid, a true and correct copy of the above and foregoing Reply Brief of Appellant to:

George S. Luter, Jr., Esquire
Attorney at Law
Post Office Box 3656
Jackson, MS 39207-3656

Honorable Winston Kidd
Hinds County Circuit Court Judge
Post Office Box 327
Jackson, MS 39205-0327

This the 2nd day of November, 2007.


Mary Margaret Bowers, MSB [REDACTED]
Special Assistant Attorney General

Westlaw.

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Office of the Attorney General

State of Mississippi

Opinion No. 93-1017

March 16, 1994

Milton G. Walker, Executive Director
Public Employees' Retirement System
429 Mississippi Street
Jackson, Mississippi 39201-1005

Dear Dr. Walker:

Attorney General Mike Moore received your request for an official opinion and assigned it to me for research and response. In your letter, a copy of which is attached, you ask:

If a factual situation were to exist in which an applicant has submitted a claim for "line-of-duty" disability benefits and the applicant has a psychiatric diagnosis and medical documentation which describes a mental incapacity attributable to the applicant's psychological reaction to a specific event or to general situations which have occurred on an ongoing basis in the performance of duty, would the applicant be eligible for benefits if no medical evidence is presented to show the mental incapacity was directly caused by an accident or traumatic event resulting in some physical injury? Stated another way, does the statute require the accident or traumatic event to result in some physical injury which in turn causes the physical or mental incapacity or may such incapacity result with no physical injury whatsoever?

As you note in your letter, section 25-11-114(6) of the Mississippi Code of 1972, Annotated, provides:

Regardless of the number of years of creditable service upon the application of a member or employer, any active member who becomes disabled as a direct result of an accident or traumatic event occurring in the line of performance of duty, provided the medical board or other designated governmental agency after a medical examination certifies that the member is mentally or physically incapacitated for the further performance of duty and such incapacity is likely to be permanent, may be retired by the board of trustees on the first of the month following the date of filing such application but in no event shall the retirement allowance commence before the termination of state service. The retirement allowance shall equal the allowance of disability retirement as provided in Section 25-110-113, but shall not be less than fifty percent (50%) of average compensation.

Permanent and total disability resulting from a cardiovascular, pulmonary or musculo-skeletal condition which was not a direct result of a traumatic event occurring in the performance of duty shall be deemed an ordinary disability. (emphasis added).

This section was originally enacted in 1984 to provide disability and death benefits, regardless of the years of creditable service, to members of the Public Employees' Retirement System injured or killed in the line of performance of duty. Chapter 311, Mississippi Laws of 1984.

Eligibility and benefits payable for line of duty disability differ in several important aspects from eligibility and benefits payable for regular disability. As stated, eligibility for line of duty benefits commences without regard to any minimum requirement relating to creditable service. A member is not eligible for regular disability benefits until the member has at least four years of creditable service. Although both benefits are calculated in the same manner, the retirement allowance for line of duty disability will not be less than fifty percent of average compensation.

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Members are eligible for regular disability benefits due to a disability related or unrelated to the performance of their duties. In order to qualify for line of duty disability, a member must show that the disability was a direct result of an accident or traumatic event occurring in the line of performance of duty. Cardiovascular, pulmonary or musculo-skeletal conditions which are not a direct result of a traumatic event occurring in the performance of duty are expressly excluded from consideration as line of duty disabilities and are deemed to be ordinary disabilities. Miss. Code Ann. sections 25-11-113, 25-11-114.

***2** These differences in eligibility and benefits payable pursuant to each type of disability indicate a general statutory scheme to protect members for a broad range of disabilities, regardless of causation or connection with the performance of duties, after a member has creditable service of a least four years, while also protecting members with a higher minimum benefit for a limited category of disabilities, those disabilities directly resulting from an accident or traumatic event occurring in the line of performance of duty, without regard to creditable service.

In response to your questions, in order to qualify for line of duty disability benefits, a member's disability must be a direct result of an accident or traumatic event occurring in the performance of duty. While unable to locate a Mississippi statute or case defining the term "traumatic event", it has been defined by the court of another jurisdiction as an event in which a worker involuntarily meets with a physical object or some other external matter and the worker is a victim of a great rush of power that he himself did not bring into motion. This definition was held not to include physical injuries resulting from a slip and fall accident and physical conditions resulting from an excessive work effort. See *Kane v. Board of Trustees*, 498 A. 2d 1252 (N.J. 1985). The New Jersey statute at issue in *Kane* did not include the term "accident", which is included in section 25-11-114. The term "accident" is defined in *Black's Law Dictionary* as a befalling; an event that takes place without one's foresight or expectation; chance; contingency; often, an undesigned and unforeseen occurrence of an afflictive or unfortunate character; casualty; mishap; as to die by an accident.

While there is no express statutory requirement that a resulting mental incapacity be accompanied by some physical injury, application of the definitions shown above would include some associated physical injury even though the physical injury may be temporary and minor and it may or may not serve as a causal link to the mental incapacity. The member must prove, however, that the mental incapacity is the direct, as opposed to indirect, result of the accident or traumatic event. It should be noted that the requirement of a traumatic event or accident would preclude a claim for line of duty disability benefits based exclusively on general situations occurring on an ongoing basis as described in your letter.

Very truly yours,
Mike Moore
Attorney General

By: Charles T. Rubisoff
Special Assistant Attorney General

Attachment

December 22, 1993

Honorable Mike Moore
Attorney General
State of Mississippi
5th Floor Gartin Justice Building
Jackson MS 39201

Dear General Moore:

Your opinion is respectfully requested as to the interpretation of the PERS law governing the provision of benefits for disability in the line-of-duty. The relevant statute, Miss. Code Ann. Sec. 25-11-114(6), 1972, reads as follows:

***3** "Regardless of the number of years of creditable service upon the application of a member or employer, any active member who becomes disabled as a direct result of an accident or traumatic event occurring in the

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line of performance of duty, provided the medical board or other designated governmental agency after a medical examination certifies that the member is mentally or physically incapacitated for the further performance of duty and such incapacity is likely to be permanent, may be retired by the Board of Trustees on the first of the month following the date of filing such application but in no event shall the retirement allowance commence before the termination of state service. The retirement allowance shall equal the allowance on disability retirement as provided in Section 25-11-113, but shall not be less than fifty percent (50%) of average compensation.

Permanent and total disability resulting from a cardiovascular, pulmonary or musculo-skeletal condition which was not a direct result of a traumatic event occurring in the performance of duty shall be deemed an ordinary disability."

Further, please note that the statute provides in Section 25-11-113(1)(a) that "... for the purposes of disability determination, the medical board for other designated governmental agency shall apply the following definition of disability: the inability to perform the usual duties of employment or the incapacity to perform such lesser duties, if any, as the employer, in its discretion, may assign without material reduction in compensation, or the incapacity to perform the duties of any employment covered by the Public Employees' Retirement System (PERS) (Section 25-11-111, et.seq.) that is actually offered and is within the same general territory work area, without material reduction in compensation."

If a factual situation were to exist in which an applicant has submitted a claim for "line-of-duty" disability benefits and the applicant has a psychiatric diagnosis and medical documentation which describes a mental incapacity attributable to the applicant's psychological reaction to a specific event or to general situations which have occurred on an ongoing basis in the performance of duty, would the applicant be eligible for benefits if no medical evidence is presented to show the mental incapacity was directly caused by an accident or traumatic event resulting in same physical injury? Stated another way, does the statute require the accident or traumatic event to result in some physical injury which in turn causes the physical or

mental incapacity or may such incapacity result with no physical injury whatsoever?

Thank you for your consideration of this matter. I look forward to your reply.

Sincerely,
Milton G. Walker
Executive Director

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