

Eligibility for disability benefits; notice of injury

§ 47-7-102. Eligibility for disability benefits; notice of injury; application for benefits; periodic medical examinations; termination of benefits; action contesting determination of board

(a) Any firefighter or volunteer firefighter who, while a dues-paying member of this fund, is rendered totally and permanently physically disabled by injuries suffered while performing the duties of the position to which he was regularly assigned, so as to be unable physically to perform substantially all of the duties of that position to which he was regularly assigned when the disability originated and who, as a result of such physical disability, is separated from his work as a firefighter or his appointment as a volunteer firefighter shall be entitled to the maximum monthly disability benefit in effect on the date of the filing of his application for such benefit until his disability ceases or until the happening of one or more of the events set forth in subsection (f) of this Code section, provided that such firefighter or volunteer firefighter:

(1) Gives notice to the board within 12 months of the date on which such injuries are suffered on such form as the board may prescribe that he has suffered physical injuries on which a disability application may be filed; and

(2) Makes application to the board for such benefit within 12 months of the date on which he is separated from his employment as a firefighter or his appointment as a volunteer firefighter as a result of such total and permanent disability.

Such benefit shall be payable from the beginning of the seventh calendar month after the date of such separation or the date of application, whichever is later.

(b) Any firefighter who, while a dues-paying member of this fund, is rendered, by heart disease or respiratory disease, totally and permanently disabled so as to be unable to perform substantially all of the duties of the position to which he was regularly assigned and who, as a result of such disability, is separated from his work as a firefighter shall be entitled to the maximum monthly disability benefit in effect on the date of the filing of his application for such benefit until his disability ceases or until the happening of one or more of the events set forth in subsection (f) of this Code section, provided that:

(1) Such firefighter makes application to the board for such benefit within 12 months of the date on which he is separated from his employment as a firefighter as a result of such total and permanent disability; and

(2) Such firefighter shall have been a member in good standing of the fund for five consecutive years immediately prior to his application for disability.

Such benefit shall be payable from the beginning of the seventh calendar month after the date of disability or the date of application, whichever is later.

(c) Any volunteer firefighter shall be eligible for the disability benefit afforded firefighters under subsection (b) of this Code section upon separation from his appointment as a volunteer firefighter on account of such disability, in the same manner and upon the same conditions such benefits would be available to a firefighter, provided that, in addition, such volunteer firefighter:

(1) Has lawfully become a member of the fund and has been a member in good standing for ten consecutive years immediately prior to his application for a disability benefit; and

(2) Has at least 15 years of creditable service as a firefighter or volunteer firefighter.

(d) No benefit shall be payable under this Code section for any disability which results from or is attributable to:

(1) Chronic and excessive consumption of alcoholic beverages;

(2) Addiction to drugs, the use of which drugs is prohibited in this state by law;

(3) Engagement by the member in any criminal act;

(4) Mental, emotional, or psychological illness or condition;

(5) Injury sustained by the member while serving on active duty in the armed forces or while on active duty in the National Guard or other armed forces reserve unit; or

(6) An illness, disease, or physical injury or abnormality existing or suffered prior to current membership in the fund or the aggravation of such preexisting illness, disease, or physical injury or abnormality.

(e) Once each year during the first five years following the commencement of a disability benefit under this Code section and once in every three-year period thereafter, the board may require a disability beneficiary to undergo a medical

examination, such examination to be made at his place of residence or other place mutually agreed upon, by a physician or physicians designated by the board. Such disability benefit recipient himself may request such an examination. The designated physician or physicians shall report to the board, following each examination, the current status and condition of the benefit recipient's disability.

(f) A disabled member's disability benefit shall cease:

(1) If he returns to service with a fire department in this state or any municipality or other political subdivision thereof;

(2) If he refuses to submit to any medical examination required under this Code section; and the benefit shall remain discontinued until the member's withdrawal of such refusal and submission to the requested medical examination, provided that if his refusal continues for one year, all his rights in and to any disability benefit may be revoked by the board;

(3) (A) If, within the first 24 months after the commencement of disability benefits under this Code section, the member does in fact obtain gainful employment in any occupation compensating him, in the case of a firefighter, at 75 percent or more of the compensation for the position he occupied payable at the time of the member's separation from employment because of such disability but increased at the simple rate of 3 percent per annum during the period of such disability or, in the case of a volunteer firefighter, at the rate of \$10,000.00 per annum, increased by the simple rate of 3 percent per annum from January 1, 1991.

(B) If, following 24 months after the commencement of disability benefits under this Code section, the board determines that the member either:

(i) Earns in fact in any occupation or, based upon any medical examination, is able to earn in any occupation, in the case of a firefighter, at least one-half of the annual compensation the member was receiving as a firefighter immediately prior to separation from employment or position on account of such disability, increased by the simple rate of 3 percent per annum of the date of separation or, in the case of a volunteer firefighter, the sum of \$7,500.00 per annum, increased by the simple rate of 3 percent per annum commencing January 1, 1991; or

(ii) In fact, performs in any occupation or, based upon any medical examination, is able to perform in any occupation substantially all of the duties of any occupation on at least a one-half time basis;

(4) If the board determines, on the basis of any medical examination, that the member has sufficiently recovered from his disability so as again to be able to

perform substantially the duties of the position to which he was last regularly assigned prior to the time of separation on account of disability so as to be able to engage in any occupation or gainful employment for which he is reasonably suited by virtue of his background, training, education, and experience; or

(5) When he dies.

(g) The board shall prescribe and furnish a form and procedure for the application for a disability benefit. Upon receipt of an application the board may pass upon and decide whether to grant or deny the application on the basis of the submitted information. The board may also request that additional physicians' reports be submitted by the applicant or may request that the applicant for a disability benefit appear personally before the board. Receipt by the applicant of a disability benefit or payments under the federal Social Security Act or any local pension Acts may be considered by the board as evidence of eligibility for a disability benefit under this Code section.

(h) Notwithstanding the provisions of subsection (b) of Code Section 47-7-124, no action shall be brought or pending action maintained contesting any determination of the board with respect to any matter under this Code section or any predecessor statute unless such action is or had been initiated within one year after the determination of the board.

(i) (1) Except as otherwise provided in paragraph (3) of this subsection, effective April 1, 1989, the maximum monthly disability benefit for any person who had retired on disability on or after July 1, 1988, shall be \$335.00 per month commencing April 1, 1989.

(2) Except as otherwise provided in paragraph (3) of this subsection (i), effective April 1, 1989, the monthly disability benefit to which any person who had retired before July 1, 1988, would be otherwise entitled shall be increased by the amount of \$120.00 per month commencing April 1, 1989.

(3) Effective on April 1, 1989, the monthly disability benefit to which any person who retired on disability before April 1, 1989, would be otherwise entitled shall be increased by \$120.00 per month commencing April 1, 1989, but such increase shall be paid only for the number of months between July 1, 1988, and April 1, 1989, during which such person received disability benefits after which the payments pursuant to this paragraph shall cease.

(j) (1) Effective July 1, 1990, the maximum monthly disability retirement benefit for any person who retires under this Code section on or after that date shall be \$375.00.

(2) Effective July 1, 1990, the maximum monthly retirement benefit which would otherwise be payable to persons retired under this Code section prior to July 1, 1990, shall be increased in the amount of \$40.00 per month.

(3) Effective July 1, 2000, the monthly benefit for any member who retires under this Code section shall be no less than \$500.00.

(k) Any other provision of this Code section to the contrary notwithstanding, no member who is an active member of the fund on July 1, 1993, and no member who becomes an active member of the fund or who again becomes an active member of the fund on or after July 1, 1993, shall be entitled to any benefits under this Code section; provided, however, that any person who is receiving benefits pursuant to the provisions of this Code section on such date shall continue to be eligible to receive such benefits under the terms and conditions provided in this Code section; provided, further, that any member who has timely given notice to the board or who has timely made application to the board for disability benefits in accordance with this Code section prior to July 1, 1993, shall, upon approval of the application for such benefits, continue to be eligible for such benefits pursuant to the provisions of this Code section.

History

Ga. L. 1957, p. 323, § 2; Ga. L. 1960, p. 991, § 4; Ga. L. 1961, p. 417, § 4; Ga. L. 1966, p. 242, § 2; Ga. L. 1968, p. 441, § 5; Ga. L. 1970, p. 334, § 2; Ga. L. 1971, p. 332, § 2; Ga. L. 1973, p. 186, § 2; Ga. L. 1976, p. 235, § 2; Ga. L. 1981, p. 608, § 2; Ga. L. 1982, p. 3, § 47; Ga. L. 1983, p. 1310, § 4; Ga. L. 1985, p. 209, § 1; Ga. L. 1989, p. 50, § 1; Ga. L. 1989, p. 339, § 4; Ga. L. 1990, p. 554, § 2; Ga. L. 1991, p. 130, § 1; Ga. L. 1993, p. 476, § 6; Ga. L. 1997, p. 1376, § 1; Ga. L. 2000, p. 562, § 8.