

LAWS OF DELAWARE
VOLUME 83
CHAPTER 286
151st GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 308

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO DISABILITY PENSIONS FOR DELAWARE STATE POLICE AND COUNTY AND MUNICIPAL POLICE AND FIREFIGHTERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 83, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by designating accordingly:

§ 8365. Eligibility for disability pension.

(a) A member who suffers a partial or total disability resulting from an individual and specific act the type of which would normally occur only while employed as a police officer shall be eligible for a duty-connected disability pension. If such act involves a traumatic event which directly causes an immediate cardiovascular condition which results in partial or total disability, the member shall be eligible for a partial or total duty-connected disability pension.

(b) A member with 5 years of credited service who suffers a partial or total disability and who is not eligible for a duty-connected disability pension shall be eligible for an ordinary partial or total disability pension.

(c) The determination of disability and its cause shall be made by the Board, or, if so delegated by the Board, by the Executive Secretary, after review of medical documentation submitted by the applicant in the form required by the Board.

(d) For the purposes of this section, whether a member is employed as an on-duty state trooper, as a municipal officer pursuant to a contract with the State, or on an authorized special duty function, the following duties shall be presumed to occur only while employed as a police officer, without limiting the scope of acts embraced by subsection (a) of this section:

- (1) Engaging in a high-speed chase;
- (2) Effecting an arrest (criminal or traffic);
- (3) Pursuing a suspect (criminal or traffic);
- (4) Patrolling (criminal or traffic);
- (5) Directing traffic or removing traffic hazards;
- (6) Assisting a civilian, for example, a motorist alongside of the highway or rendering aid in a life-threatening situation (fire, drowning);
- (7) In-service training other than physical fitness;
- (8) Performing police functions at a crime scene or in connection with the investigation thereof; or
- (9) Being assaulted whether by a suspect, detainee, arrestee, prisoner or mental patient.

§ 8367. Payment of disability pension.

(a) Disability pension payments shall be made to a member for each month beginning with the month in which the member becomes eligible to receive such pension and ending with the month in which the member ceases to be eligible or dies.

~~(b) Any member receiving a disability pension who has not reached normal retirement date shall report to the Board annually, in a form prescribed by the Board, total earnings from any gainful occupation or business and worker's compensation benefits in the preceding calendar year. The excess of such earnings and/or such benefits over the current base pay of the rank held at the time of disability shall be deducted from the disability pension beginning 90 days following the day the report is due, in a manner determined by the Board. If any member received a disability pension for less than 12 months in the calendar year for which earnings are reported, the deduction, if any, shall be determined on a pro rata basis.~~

(c) If a member who is initially determined to be totally disabled recovers, yet is still partially disabled, the total disability pension shall be reduced to a partial disability pension for as long as the member shall remain partially disabled.

(d) If a member who is disabled recovers and is no longer totally or partially disabled, the disability pension shall be discontinued unless:

- (1) The member has reached normal retirement date; or
- (2) In the case of a duty-connected disability, the member is not offered employment by the State in a position for which the member is suited by training and experience.

(e) A member aggrieved by the reclassification or termination of disability pension pursuant to subsection ~~(e)~~ ~~or (d)~~ (b) or (c) of this section may appeal such decision to the Superior Court within 30 days of the day the decision is mailed. The appeal

shall be on the record, without a trial de novo. The Court may remand the case to the Board for further proceedings on the record if the Court determines that the record is insufficient for review. When factual determinations are at issue, the Court's review, in the absence of actual fraud, shall be limited to a determination of whether the Board's decision is supported by substantial evidence in the record.

Section 2. Amend Chapter 88, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by designating accordingly:

§ 8815. Eligibility for disability pension.

(a) A member who suffers a partial or total disability resulting from an individual and specific act, the type of which would normally occur only while employed as a police officer/firefighter, shall be eligible for a duty-connected disability pension. If such act involves a traumatic event which directly causes an immediate cardiovascular condition which results in partial or total disability, the member shall be eligible for a partial or total duty-connected disability pension.

(b) A member with 5 years of credited service who suffers a partial or total disability and who is not eligible for a duty-connected disability pension shall be eligible for an ordinary partial or total disability pension.

(c) The determination of disability and its cause shall be made by the Board, or, if so delegated by the Board, by the Executive Secretary, after review of medical documentation submitted by the applicant, in the form required by the Board.

(d) For the purposes of this section, whether a member is employed as an on-duty police officer or on an authorized special duty function, the following duties shall be presumed to occur only while employed as a police officer without limiting the scope of acts embraced by subsection (a) of this section:

- (1) Engaging in a high-speed chase;
- (2) Effecting an arrest (criminal or traffic);
- (3) Pursuing a suspect (criminal or traffic);
- (4) Patrolling (criminal or traffic);
- (5) Directing traffic or removing traffic hazards;
- (6) Assisting a civilian, for example, a motorist alongside of the highway or rendering aid in a life-threatening situation (fire, drowning);
- (7) In-service training other than physical fitness;
- (8) Performing police functions at a crime scene or in connection with the investigation thereof; or
- (9) Being assaulted whether by a suspect, detainee, arrestee, prisoner or mental patient.

§ 8817. Payment of disability pension.

(a) Disability pension payments shall be made to a member for each month beginning with the month in which the member becomes eligible to receive such pension and ending with the month in which the member ceases to be eligible or dies.

~~(b) Any member receiving a disability pension who has not reached normal retirement date shall report to the Board annually, in a form prescribed by the Board, total earnings from any gainful occupation or business and Worker's Compensation benefits in the preceding calendar year. The excess of such earnings and/or such benefits over the current base pay of the rank held at the time of disability shall be deducted from the disability pension beginning 90 days following the day the report is due, in a manner determined by the Board. If any member received a disability pension for less than 12 months in the calendar year for which earnings are reported, the deduction, if any, shall be determined on a pro rata basis.~~

(c) If a member who is initially determined to be totally disabled recovers, yet is still partially disabled, the total disability pension shall be reduced to a partial disability pension for as long as the member shall remain partially disabled.

(d) If a member who is disabled recovers and is no longer totally or partially disabled, the disability pension shall be discontinued unless:

- (1) The member has reached normal retirement date, or
- (2) In the case of a duty-connected disability, the member is not offered employment by the council or municipality in a position for which the member is suited by training and experience.

(e) A member aggrieved by the reclassification or termination of disability pension pursuant to subsection ~~(e)~~ or ~~(d)~~ (b) or (c) of this section may appeal such decision to the Superior Court within 30 days of the day the decision is mailed. The appeal shall be on the record, without a trial de novo. The Court may remand the case to the Board for further proceedings on the record if the Court determines that the record is insufficient for review. When factual determinations are at issue, the Court's review, in

the absence of actual fraud, shall be limited to a determination of whether the Board's decision is supported by substantial evidence in the record.

Approved April 7, 2022