

105 KAR 1:210. Disability procedures.

RELATES TO: KRS 16.505-16.652, 61.510-61.705, 78.510-78.852, 344.030, 29 C.F.R. Part 1630, 42 U.S.C. 12111(9)

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 16.582, 61.600, and 61.665 provide for a process for applying for disability retirement benefits to members of the retirement systems and a process for administrative appeal of a denial of an application or reapplication for disability retirement benefits. This administrative regulation establishes the procedure for filing an application or reapplication for disability retirement benefits and the procedures for filing an administrative appeal of a denial of an application for disability retirement benefits.

Section 1.

(1) An application or reapplication for disability benefits shall be made on "Form 6000, Notification of Retirement".

(2)

(a) The application or reapplication shall be filed at the retirement systems within twenty-four (24) months, which is 730 calendar days, of the applicant's last day of paid employment in a regular full-time position.

(b) The time period for filing an application or reapplication for disability retirement benefits shall begin on the day after the applicant's last day of paid employment in the regular full-time position and shall end at close of business on the following 730th day.

(c) If the last day of the period is a Saturday, Sunday, or state or federal holiday, then the application shall be valid if filed at the retirement systems by the close of the next business day following the weekend or holiday.

(d) The applicant's employer shall certify the applicant's last day of paid employment.

(e) An application or reapplication may be submitted prior to the applicant's last day of paid employment.

Section 2.

(1) If the applicant is eligible to begin drawing early retirement benefits, the applicant shall be notified of the right to receive a retirement allowance while the disability application is being processed.

(2) Election of early retirement by the applicant shall not affect the application for disability retirement.

Section 3.

(1) The applicant shall complete and submit to the retirement systems a "Form 8035, Employee's Job Description". The applicant's employer shall complete and submit to the retirement systems a "Form 8030, Employer's Job Description". Both the applicant and the employer shall provide information regarding applicant's request for reasonable accommodations and the reasonable accommodations available to applicant, whether or not the applicant actually accepted the reasonable accommodations.

(2) The retirement systems may require additional details from the applicant and the applicant's employer regarding the applicant's job duties, if necessary.

Section 4.

(1) If the retirement systems requires an applicant to submit to a medical or psychological examination under KRS 61.665(2)(j) or 61.665(3)(c), the retirement systems shall reimburse the applicant for mileage from the applicant's home address as it is on file at

the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. The applicant shall be reimbursed for the most direct and usually traveled routes.

(2) Mileage shall be based on the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas." The applicant shall complete and submit a Form 8846, Independent Examination Travel Voucher indicating the mileage the applicant traveled from the applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. The applicant shall use the most direct and usually traveled routes.

(3) The mileage certified by the applicant shall not be greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" for the most direct and usually traveled route from applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. If the mileage certified by the applicant is greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" the retirement systems shall pay the applicant the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas".

(4) Reimbursement for use of a privately owned vehicle shall be made at the IRS established standard mileage rate which changes periodically; and shall not exceed the cost of commercial coach fare.

(5) Actual costs for parking shall be reimbursed upon submission of receipts. The applicant shall submit the originals of the parking receipts along with a written request for reimbursement.

(6) Actually bridge and highway toll charges shall be reimbursed if the bridge or highway is on the most direct and usually traveled route. The applicant shall submit the originals of the bridge and highway toll receipts along with a written request for reimbursement.

(7) The applicant shall file at the retirement office a completed Form 8846, Independent Examination Travel Voucher, within fifteen (15) days of the date of the examination or evaluation in order to receive reimbursement for travel expenses.

Section 5. The applicant shall provide to the retirement system information concerning his continuing status with regard to receipt of Workers' Compensation and Social Security disability benefits.

Section 6.

(1) The applicant shall complete and submit a "Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information." The applicant shall attach all medical information, forms, and other information for review by the medical examiners to the "Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information."

(2) The retirement systems shall submit the completed "Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information" and all the attached information to the medical examiners upon receipt by the retirement systems.

(3) The time periods prescribed in KRS 61.600 and 61.665 shall begin on the day the notification of the recommendation of the medical examiners is mailed by the retirement systems and shall end at close of business on the last day of the prescribed time period.

(4) If the last day of the period is a Saturday, Sunday, or state or federal holiday, then the application shall be valid if filed at the retirement systems by the close of the next business day following the weekend or holiday.

(5) An applicant's request for a formal hearing shall be made in writing.

- (6) Statements by the physicians shall not be considered medical evidence unless accompanied by documented medical records or test results.

Section 7. The medical examiner may contact the applicant or the applicant's physicians to request additional medical evidence as necessary.

Section 8.

- (1) The hearing officer may allow the applicant to introduce, among other evidence, the determination of Workers' Compensation or Social Security Administration awarding disability benefits to the applicant.
- (2) The hearing officer shall consider only objective medical records contained within the determination and shall not consider vocational factors or be bound by factual or legal findings of other state or federal agencies.

Section 9.

- (1) The provisions of this section shall only apply to a member who began participating on or before July 31, 2004.
- (2) If an application for disability is approved, the applicant's disability benefit shall be paid retroactive to the month following the month of the applicant's last day of paid employment.
- (3) The service added for determining the disability retirement allowance shall be determined under KRS 16.582 if the applicant's last day of paid employment was in a hazardous position, or under KRS 61.605 if the applicant's last day of paid employment was in a nonhazardous position.
- (4) If the applicant has both hazardous and nonhazardous service in the same system, the added service shall be prorated between hazardous and nonhazardous service based on the proportion of service in each position to the whole, except that all of the added service shall be applied toward the nonhazardous retirement allowance if:
 - (a) The applicant is disabled from a hazardous position as a result of an act in line of duty; and
 - (b) Twenty-five (25) percent of the applicant's final rate of pay is greater than the hazardous disability retirement allowance determined using the prorated added service.
- (5) If the applicant has service in more than one (1) system administered by the Kentucky Retirement Systems, the added service shall be prorated between the systems based on the proportion of service in each system to the whole, except if the applicant is disabled from a hazardous position in one (1) system as a result of an act in line of duty and twenty-five (25) percent of the applicant's final rate of pay is greater than the hazardous disability retirement allowance determined using the prorated added service:
 - (a) All of the added service shall be applied toward the nonhazardous retirement system if the applicant is vested for disability benefits from the nonhazardous system.
 - (b) All of the added service shall be applied toward the hazardous retirement system if the applicant is not vested for disability benefits from the nonhazardous system.

Section 10.

- (1) If the applicant who is awarded disability retirement benefits did not receive early retirement benefits, upon the applicant's selection of a payment option, the retirement systems shall pay the applicant the total monthly retirement allowances payable from the effective date of disability retirement.
- (2)
 - (a) If the applicant received early retirement benefits, the retirement systems shall calculate and pay to the applicant the difference between the early retirement benefit which was paid to the applicant and the disability benefit.
 - (b) The applicant shall not change his payment option.

(3) If benefits are payable to dependent children, as defined in KRS 16.505(17), the parent or guardian shall provide:

- (a) A completed Form 6456, Designation of Dependent Child;
 - (b) A verification of full-time student status of a child age eighteen (18) or over;
 - (c) A copy of the birth certificate of each dependent child;
 - (d) If a dependent child is a minor, a Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor. If the minor child has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor, the guardian or conservator shall submit a copy of the court order appointing the guardian or conservator; and
 - (e) Notice of the death or marriage of a dependent child, or if the dependent child ceases to be a full-time student.
 - (f) A copy of the dependent child's verification of full-time student status shall be filed with the retirement system for each semester of study within thirty (30) days following the start and within thirty (30) days following the end of each semester.
- (4) An increase provided to recipients under KRS 61.691 shall be applied to the applicant's disability benefit and payments to dependent children in determining the total retroactive payments owed to the applicant and dependent children.

Section 11.

(1) The applicant shall notify the retirement systems of his intent to apply for workers' compensation or benefits from the Social Security Administration. Upon receipt of approval for workers' compensation or benefits from the Social Security Administration, the applicant shall file at the retirement systems a copy of the approval notice containing the amount of the award.

(2) To determine the maximum benefit under KRS 61.607, the following shall be added together:

- (a) The applicant's gross monthly disability retirement allowance determined in accordance with KRS 61.605 or 16.582, excluding payments to dependent children and before any actuarial reduction for purposes of an optional retirement plan under KRS 61.635 or 16.576, converted to an annual amount.
 - (b) The applicant's total gross annual benefit from workers' compensation. If the applicant's benefit includes a lump sum payment or a payment for a period less than the applicant's lifetime, then an annualized benefit shall be determined as follows:
 - 1. The gross amount of any lump sum payment shall be divided by the applicant's life expectancy, expressed in years, from the effective date of the award.
 - 2. The total gross amount of all payments paid for any period other than the applicant's lifetime shall be divided by the applicant's life expectancy, expressed in years, from the effective date of the award.
 - 3. The total determined in subparagraphs 1 and 2 of this paragraph shall be combined and added to the total gross annual amount of the applicant's lifetime benefit, if any.
 - (c) The applicant's gross monthly disability benefit from the Social Security Administration, excluding spouse or dependent benefits converted to an annual amount.
- (3) If the projected combined monthly benefit exceeds 100 percent of the disabled employee's final rate of pay or final compensation, whichever is greater, the disability retirement allowance from the retirement system shall be reduced as follows:
- (a) The difference shall be divided by twelve (12) and subtracted from the applicant's monthly retirement allowance determined in accordance with KRS 61.605 or 16.582,

excluding payments to dependent children and before any actuarial reduction for purposes of an optional retirement plan under KRS 61.635 or 16.576.

(b) The actuarial reduction for the applicant's optional plan under KRS 61.635 or 16.576 shall be applied to determine the applicant's monthly retirement allowance. The reduction shall apply to all retirement allowances received since the date the combined benefits exceeded 100 percent of the higher of the applicant's final compensation or final rate of pay based on the effective dates of the individual benefits.

(4) The disability retirement allowance payable shall not be reduced below an amount which would result from a computation of retirement allowance under early retirement or the disability retirement allowance from the retirement system using the disabled employee's actual total service, whichever is greater.

Section 12.

(1) A recipient shall complete a Form 6130, Authorization for Deposit of Retirement Payment, to have the monthly retirement allowance deposited to an account in a financial institution.

(2) The recipient and the financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's office to the designated financial institution.

(3)

(a) At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new Form 6130, Authorization for Deposit of Retirement Payment, and filing the form at the retirement systems.

(b) The last Form 6130, Authorization for Deposit of Retirement Payment on file at the retirement systems shall control the electronic transfer of the recipient's retirement allowance.

(4) The recipient may complete a Form 6135, Request for Payment by Check.

(5) The retirement systems shall not process the retirement allowance until the recipient has filed a completed Form 6130, Authorization for Deposit of Retirement Payment or filed a completed Form 6135, Request for Payment by Check.

Section 13. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 6000, "Notification of Retirement", July 2004;

(b) Form 8030, "Employer's Job Description", July 2004;

(c) Form 8035, "Employee's Job Description", July 2004;

(d) Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor", May 2003;

(e) Form 6456, "Designation of Dependent Child," July 2004;

(f) Form 6130, Authorization for Deposit of Retirement Payment", May 2008;

(g) Form 6135, "Request for Payment by Check", February 2002;

(h) Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information", May 2008; and

(i) Form 8846, "Independent Examination Travel Voucher", May 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(18 Ky.R. 932; eff. 11-8-91; Am. 19 Ky.R. 968; 1338; eff. 12-9-92; 20 Ky.R. 829; eff. 12-6-93; 21 Ky.R. 1525; eff. 2-8-95; 22 Ky.R. 775; eff. 12-7-95; 27 Ky.R. 1050; 1444; eff. 12-21-2000; 28 Ky.R. 912; 1350; eff. 12-19-2001; 29 Ky.R. 767; 1250; eff. 11-12-02; 31 Ky.R. 386; eff. 11-5-04; 35 Ky.R. 111; Am. 538; eff. 10-3-08; Certified to be amended, filing deadline 7-29-2021.)