



El Paso Firemen & Policemen's Pension Fund



## **DISABILITY PENSION APPLICATION PROCEDURE**

Re-Stated and Approved July 19, 2006  
Revised January 23, 2008  
Revised April 16, 2008  
Revised November 18, 2009

**EL PASO FIREMEN & POLICEMENS' PENSION FUND  
DISABILITY PENSION APPLICATION PROCEDURE**

**PURPOSE:**

Pursuant to its authority under Section 8 of Article 6243b of the Revised Civil Statutes of Texas ("Article 6243b") and Section 11 of the City of El Paso, Texas Firemen and Policemen's Pension Fund ("Plan"), the Board of Trustees ("Board") of the Plan hereby amends and adopts the following as its procedure ("Procedure") for processing disability pension applications of members ("Member"). This Procedure establishes a coordinated and documented means of processing Members' applications for disability pensions under the Plan.

The Board intends that this Procedure will clarify for all parties concerned the:

- rights, duties and responsibilities of the Board and its staff in the Disability Pension Application and Review Process,
- rights, responsibilities, and reasonable expectations of Members who might wish to apply for a disability pension benefit under the terms of the Plan, and
- afford everyone involved in the disability pension application process with an adequate understanding of when a Member may be eligible for a service-connected or ordinary disability pension (herein referred to as a ("Disability Pension")), when a Disability Pension may be denied, and what is involved in the process of applying for a Disability Pension. To that end, this Procedure will provide a detailed outline of the steps as well as the normal periods involved in the typical disability pension application process. In addition, Members will be provided with all documents necessary to comply with this Procedure.

**COOPERATION:**

Absent a reasonable excuse, the failure of a Member to fulfill the requirements of this Procedure to appear at scheduled appointment(s) with physician(s) or at scheduled Board Meetings or "hearings" will terminate the Member's application for a Disability Pension. If this happens, a Member who still desires to qualify for a Disability Pension will be required to reapply for a Disability Pension.

**PRIVATE INVESTIGATORS:**

At any time during the disability process, the Plan may hire a Private Investigator to obtain information relating to the Disability Pension Application.

**MULTIPLE HEARINGS:**

When considering an application for a Disability Pension, the Disability Committee of the Board or the Board may decide that additional information on some subject relating to the application is

desirable. If so, then it may defer action until a subsequent meeting. In addition to its authority to request investigations, the Board reserves the right to issue process for witnesses and to examine those witnesses under oath.

**PROCEDURE:**

**I. Federal & State Law May Protect An Employees' Right to a Job & Reasonable Accommodation**

Members are advised that they may have rights under the Federal Americans with Disabilities Act or State law. They should request reasonable accommodation of their condition with their Department and with the City of El Paso ("City").

**II. The Disability Pension Application Process**

1. A Member who wishes to apply for a Disability Pension must first contact the Pension Office and schedule a counseling appointment with a Benefits Specialist or designated representative, which appointment, generally, will be at the Pension Office.
2. The legal guardian of a Member may apply for a Disability Pension on the Member's behalf if the Member lacks the capacity to independently make such an application; however, no such application will be fully processed by the Pension Office until legal documents establishing the guardianship are presented to and approved by the Plan. Where appropriate, references to the Member in this Procedure shall likewise refer to a Member's legal guardian.
3. Prior to the scheduled counseling appointment, the Pension Office will send or provide a letter to the Member requesting that the following documents be provided to the Benefits Specialist or designated representative at the counseling appointment:
  - a. the Member's birth certificate or similar credible evidence of date of birth (such as, baptismal record);
  - b. if the Member is married:
    - (i) a copy of the Member's marriage certificate (or similar evidence of a legal marriage and social security number), and
    - (ii) a copy of the spouse's birth certificate or similar credible evidence of date of birth; and
  - c. if the Member has children, who may meet the definition of a Qualified Child, as more fully explained in Section 3.18 of the Plan, such children's birth certificate or similar credible evidence of date of birth, and if

disabled, adequate evidence of such disability and non self-supporting status.

4. At the counseling session, a Benefits Specialist or designated representative will inform the Member of the following:
  - a. the current status of the Member's retirement pension benefit, as well as the potential survivors' rights to benefits;
  - b. the Disability Pension that may be available to the Member, as well as the potential Qualified Spouse and/or Qualified Children's rights to benefits under the Plan;
  - c. the discretion of the Board to take no action on an application or order that a hearing be held at a later date;
  - d. the time frames and requirements of this Procedure;
  - e. the fact that the Member bears the burden of proof; and
  - f. the fact that the Board alone has the sole and absolute right, duty and obligation to make the final decision, based upon its weighing of all the credible evidence received from all sources at the hearing, whether a Member is so permanently disabled as to incapacitate him or her for the performance of duty.
  - g. The requirement that a written application for a Disability Pension must be made no later than one-hundred-eighty (180 ) calendar days after the Member separates employment from the City of El Paso and ceases to be a member of the Fund as determined by the Board.
  
5. After the above information has been provided to the Member, the Benefits Specialist or designated representative will ask whether the Member wishes to proceed with an application for a Disability Pension. If the Member indicates a desire to continue the process, the Benefits Specialist or designated representative will:
  - a. assist the Member in filling out an Application for Disability Retirement form (Exhibit "A" to this Procedure);
  - b. provide the Member with a copy of the "Departmental Assessment Form" (Exhibit "B" to this Procedure) which must be completed by the Department Head in full and returned to the Fund's offices. Failure to provide the "Departmental Assessment Form" will delay the disability process.

- c. advise the Member that he or she must schedule an appointment with his or her own Physician(s), (the "Attending Physician") to evaluate and prepare a detailed written "Attending Physician's Statement" (Exhibit "C" to this Procedure) to be sent to the Plan on the Member's condition; (For purposes of this Procedure, any reference to "physician" means a person licensed as a physician under Tex. Occ. Code Ann. §155.001 et seq. (Vernon 2002) (as amended)).
  - d. provide the Member with a copy of the Attending Physician's Statement. Attached to such form is an official statement of the Member's Job Description to assist the Attending Physician in responding to certain questions contained in the Attending Statement. The Attending Physician's Statement must be properly, fully and legibly completed and signed by the Attending Physician. In order to facilitate a typewritten report, this form may be downloaded at [www.elpasofireandpolice.org](http://www.elpasofireandpolice.org). If the Attending Physician's Statement and any attachments thereto are incomplete or illegible, such disability process may be postponed or delayed;
  - e. explain that the Board may require the Attending Physician's presence at a scheduled Board meeting if the Board wishes to ask questions of the Attending Physician in order to better assess the Member's claim for a Disability Pension; and
  - f. provide the Member with a copy of this Procedure.
6. It is the responsibility of the Member to ensure that a fully and properly completed Attending Physician's Statement along with any narrative and/or test results (such as, copies of medical records, CAT-scans, M.R.I.s, or psychological tests) be delivered to the Pension Office. A police report if available, shall accompany all disability applications which involve non-job related accidents.
7. Upon receipt of the Attending Physician's Statement and all required documentation, the Pension Office may determine that an examination of the Member by an Independent Physician is required. (Revised January 23, 2008)
8. Upon a determination by the Pension Office that an Independent Medical Examination (IME) of the Member by an Independent Physician is required, the Pension Office or its designated agent shall advise the Member of the date, time and location of an appointment for the IME by an Independent Physician selected by the Pension Office. In connection with the IME, the Pension Office will forward to the Independent Physician the Attending Physician's Statement and also: (i) an "Independent Physician's Statement" (Exhibit "D" to this Procedure); (ii) a statement of the Job Duties for the Member's Department; and (iii) any other medical information that the Member advises the Pension Office in writing that the Member believes to be relevant to the disability application. In appropriate circumstances the Independent Physician may render an opinion based solely upon the written materials. (Revised January 23, 2008)

9. It is the responsibility of the Member, upon notification by the Pension Office or its agent, to appear for all scheduled IME appointments and to provide to the Independent Physician pertinent medical information not yet received by the Pension Office that the Member believes relevant for the Physician's evaluation. Failure of the Member to appear for such IME at the appointed time and place, absent prior timely notice to both the Independent Physician and the Pension Office, will result in the cost of such appointment being assessed to the Member. The Pension Office will take no further action on the Member's application for a Disability Pension until such time as the required examination and evaluation has been completed. Except as otherwise provided in this Procedure, the Plan will pay the reasonable expenses for the cost of the IME and any tests or other procedures or evaluation reasonably deemed necessary to such examination. The Member shall be responsible for any and all costs of his or her own Attending Physician and related services. (Revised January 23, 2008)
10. Upon receipt of a full and complete Independent Physician's Statement of the IME, the Pension Office shall forward a copy to the Member. (Revised January 23, 2008)
11. If the Independent Physician(s) and the Attending Physician agree that the Member cannot perform the Job Duties, then the Pension Office will present as soon as practicable the Physicians' Statements and all other relevant information to the Disability Committee. (Revised January 23, 2008)
12. If however the Independent Physician and Attending Physician do not agree on the issue of whether the Member can perform the Job Duties as described, then the Pension Office will schedule an appointment for further examination and evaluation of the Member with a second Independent Physician. (Revised January 23, 2008)
13. The Pension Office will send an Independent Physician's Statement form to the second Independent Physician prior to the scheduled appointment for an IME of the Member together with the following: (Revised January 23, 2008)
  - a. A copy of all prior Independent Physician's Statement(s);
  - b. A copy of the Attending Physician's Statement and supporting documentation;
  - c. A statement of the Job Duties of the Member's Department;
  - d. Any other medical information that the Member has identified as being relevant.
14. If a majority of the examining physicians are in agreement concerning the issue of whether the Member can perform his/her current Job Duties, then the Pension Office will present all the examining physicians' statements and other relevant

information to the Disability Committee for its review and recommendation to the Board for dispositive action at the next regular scheduled meeting of the Board. The Pension Office shall provide the Member with a copy of all of the documentation to be reviewed by the Disability Committee in connection with the Member's application no later than seven (7) calendar days prior to the meeting at which the Member's application is to be considered. (Revised January 23, 2008)

15. The Pension Office may also request the Independent Physician(s) and or other persons having information relevant to the application to be present and available at a scheduled Disability Committee or Board meeting in order to thoroughly assess the Member's claim for disability benefits. If any medical professional is requested or subpoenaed to attend a meeting of the Committee or Board as herein provided, such person shall be reimbursed at a rate not to exceed the lesser of the person's then regular hourly rate of compensation or \$250.00 per hour for the time in attendance at such meeting. (Revised January 23, 2008)
16. If the Member fails to provide the Pension Office with all the required documentation within sixty (60) days from the day the Member signed the Application for Disability Retirement form, such application will be deemed incomplete and set aside. Should the Member later elect to apply for Disability Retirement, he must reapply by again completing the Disability Pension Application Process in its entirety. (Revised April 16, 2008)

### **III. The Board Meeting**

1. The Board, upon receipt of the recommendation of the Disability Committee, will render its determination concerning the Member's application for a Disability Pension in open session; however, any testimony or discussion regarding the Member's medical information will be held in closed session, unless the Member waives confidentiality and requests that the discussion be held in public session. The medical records related to the Member's application will be kept confidential and any extra copies will be destroyed by the Pension Office. (Revised January 23, 2008)
2. The Member and/or his legal representative shall have the right to attend any session, whether closed or public, where the Member's application is under discussion. Further, the Member may present such other evidence, including testimonial evidence given under oath, by any person with knowledge of facts that might bear on the Member's entitlement to a Disability Pension. (Revised January 23, 2008)
3. The attendance of a representative of the City's Human Resources Department or designated representative responsible for the Member's Department may be requested by the Board. (Revised November 18, 2009)
4. If the Member desires to address questions to persons who have information that may be relevant to the existence of a disability, the Member should request in

writing to such person(s) that they be present to offer evidence or testimony. If such person is a representative of the City's Human Resources Department or of the Member's Department or the Independent Physician, the Member should inform the Pension Office of the Member's request and the Pension Office shall request such person(s) attendance. Further, the Disability Committee or the Board in its sole and absolute discretion, may require any person's attendance whom the Pension Office advises may have relevant information to the proceedings. If a person who may have relevant information (such as representatives of the City's Human Resources Department or of the Member's Department, or designee, or one of the examining physicians) is not in attendance at the Disability Committee or Board meeting, the Disability Committee or the Board may attempt to contact such persons by telephone during the course of the meeting, provided that all persons present can hear and be heard. If, however, the Disability Committee or the Board deems a person's physical attendance necessary to proceed, a hearing on the Member's application may be postponed until the next scheduled meeting. The Member's request for the attendance of one or more persons must be submitted in writing to the Pension Office at least seven (7) calendar days prior to the meeting scheduled for that purpose. Failure to provide the seven (7) calendar day written notification may require an additional postponement of the Disability Committee's or Board's determination of the Member's application. (Revised January 23, 2008) (Revised November 18, 2009)

#### **IV. The Board's Decision**

1. When presented with the Member's Disability Pension Application, the Board shall make its decision in accordance with the standards set forth in Section 8 of Article 6243b of the Revised Civil Statutes of Texas. The date of the Board meeting awarding any Disability Pension shall be the effective date such benefit is to commence. (Revised January 23, 2008)
2. The Board's written decision regarding the Member's application shall be provided to the Member within seven (7) calendar days of the meeting in which the decision was made. (Revised January 23, 2008)

#### **V. Reconsideration of Disability Pension Application**

1. The Board may reconsider the Disability Pension Application of a Member if:
  - a. the Member provides the Board with a written request for reconsideration and any additional relevant and meaningful medical information in writing to those issues previously considered by the Board in the disability application process; and

- b. a Member's request for a reconsideration of the disability application is received by the Pension Office within ninety (90) calendar days of the Board's determination.
2. A Member's timely request for reconsideration of a Disability Pension Application will be presented to the Board at its next regular scheduled meeting.

**VI. Other Guidelines and Statements**

1. If the Pension Office receives information that a Member is engaging in activities that are inconsistent with the findings contained in the statements of the examining physicians, then upon notice to the Board Chairman, the Executive Director shall be required to engage the services of an approved private investigative service generally within seven (7) calendar days of receiving such information. The private investigative service shall be authorized to investigate the accuracy of the information received. If the Board receives such information prior to its decision on the Member's Disability Pension Application, all action shall be suspended pending the receipt and consideration of the report of the private investigative service at a duly called Board meeting. Upon receipt of a report from the investigator, the Board may notify the Member of his or her immediate recall for a medical reexamination and or requiring the Member to meet with the Disability Committee and/or the Board for the purpose of reconsidering the award of a Disability Pension.
2. The reasonable costs for medical examinations and completion of forms by the Independent Physician, as well as other authorized medical examinations (but not the costs for the Member's own physician) will be paid for by the Plan, except as provided to the contrary in this Procedure.

**VII. Decision of Board Final**

The decision of the Board with respect to a Disability Pension Application shall be final and binding on all parties except as provided under Section V, Reconsideration of Disability Pension Application