

**Members should bring the April 28, 2009 Council Agenda Item 3 for Bill 37-08.**

PS/MFP Item 1  
May 4, 2009  
**Worksession 5**

**M E M O R A N D U M**

TO: Public Safety/Management and Fiscal Policy Committee

FROM: Robert H. Drummer, Legislative Attorney 

SUBJECT: **Worksession 5:** Expedited Bill 37-08, Personnel – Disability Retirement – Amendments

Bill 37-08, Personnel – Disability Retirement –Amendments, sponsored by Council President Andrews and Councilmember Trachtenberg, was introduced on December 9, 2008. A public hearing was held on January 15. Public Safety/Management and Fiscal Policy Committee worksessions were held on January 22, February 19, April 2, and May 1. The Council held a worksession on Bill 37-08 on April 28, 2009.

**April 28 Council Worksession**

On April 28, the Council deferred action on Bill 37-08 until May 5. The Council reviewed the Bill and requested staff to provide the following additional information:

1. A chart comparing the proposed changes in the disability law with current law.
2. Information on the County's experience with the two-tier system for Group G.
3. Information on the Fairfax County disability retirement system.
4. Identification of which provisions in the Bill were recommended by the Inspector General (IG), the Executive's Internal Work Group, or the Council's consultant, Managed Care Advisors (MCA).

**May 1 Committee Worksession**

The Committee reviewed the Bill at a worksession on May 1. The Chief Negotiator for the Fraternal Order of Police, Montgomery County Lodge 35, Walter Bader, answered questions concerning the recent negotiations with the Executive concerning possible changes to the collective bargaining agreement provisions governing disability retirement. The Committee requested further information from Human Resources about the differences between the

disability retirement benefits for Group G (Fire) and Group F (Police). Councilmember Leventhal presented an amendment to the Bill.

### **Other Jurisdictions**

**1. Fairfax.** The Council requested information about the Fairfax County police disability retirement system. Fairfax County police disability is covered by Fairfax Municipal Code §§ 3-7-26 to 3-7-38. See ©43-51. Service-connected total disability retirement is 66 2/3 % of final salary until the employee's service credit reaches 25 years when it is reduced to 60% of final salary. Fairfax defines partial disability as the inability to perform some of the duties of the position. Employees on partial disability receive the same benefit, but only if the department does not have a position that they can perform.

**2. Howard County.** Police and Fire receive 66 2/3 % of final salary for a catastrophic injury and 50% of final salary for a non-catastrophic injury. The catastrophic injury follows the Social Security disability standards. See ©52-54.

**3. Baltimore County.** Police and Fire receive 75% of average final earnings for dismemberment, paralysis, or anatomical loss of use of certain body parts. All lesser disabilities receive 50% of average final earnings. See ©55-62.

### **Groups F and G Comparison**

The Committee requested a comparison of the retirement packages for Groups F and G. The Office of Human Resources prepared a chart comparing the benefits under current law (©63-67) and a description of the differences in the procedures for obtaining disability benefits. (©68-72)

### **Group G Experience with Two-Tier System**

The Council requested further information about the County's experience with the two-tier system for service-connected disability benefits for Group G that began in 2000. OHR prepared a spreadsheet providing this information. See ©73. The spreadsheet covers all retirements for Group G from 1991 to 2008. The spreadsheet shows that only 10 of the 67 members who received a service-connected disability retirement since the two-tier system began in 2000 were awarded the higher 70% benefit. Therefore, 85% of the awards were at the lower 52 ½ % level. The fiscal impact statement for the Bill and the Mercer actuary letter attached to it estimated the annual savings to the County's retirement contribution for extending the two-tier system to Group F to be more than \$1.5 million based upon an assumption that 60% of the disability retirements would be at the lower level. If the Group G experience is carried over to Group F, the annual estimated savings would increase beyond \$1.5 million.

## Leventhal Amendment

Councilmember Leventhal distributed an amendment at the May 1 worksession. The purpose of the amendment is to replace the current Bill with a new version that incorporates the tentative agreements between the FOP and the Executive on some of the items covered in Bill 37-08. Leventhal Amendment 2 is attached at ©76-94.<sup>1</sup> A summary of the differences between current law and Leventhal Amendment 2 is attached at ©74-75. Representatives from the FOP and OHR told Council staff that this amendment accurately captures the tentative agreement between the parties on those items that were agreed upon. It should be noted that all of the tentative agreement on each of these items was contingent upon an agreement on all provisions being negotiated. A complete agreement on all items was never reached by the parties. Most importantly, the parties never reached agreement on the Executive's proposal to create a partial disability benefit under a two-tier system.

The Council also requested a chart showing the differences between current law and Bill 37-08 that shows the origin of each recommended change in the Bill. A chart showing the differences between current law, Bill 37-08, and the Leventhal Amendment is at ©95-97. The last column shows if a change in each provision was recommended by the Inspector General, the Executive's Internal Work Group, or Managed Care Advisors.

## Whittaker Decision

Walter Bader mentioned the unreported 1982 decision of the Court of Special Appeals in *Montgomery County v. Whittaker* (See ©98-104) as support for the current system where both total and partial disabilities are treated the same. In *Whittaker*, the Court held that a police officer who was unable to perform his duties as a police officer but could otherwise engage in substantial gainful activity must receive total disability. The Court decision was based upon an interpretation of the County Code as it existed at the time. This construction of the County Code was later reversed in a reported decision of the Court of Appeals in *Montgomery County v. Buckman*, 333 Md. 516 (Md. 1994). Although the *Buckman* case involved a County liquor store clerk rather than a police officer, the Court held that the Code provision creating a partial disability benefit was enforceable. In short, these cases make it clear that the Council has the authority to enact laws creating a partial disability benefit for County employees.

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<sup>1</sup> Leventhal Amendment 2 attached hereto has some minor changes from the version that was distributed at the worksession on May 1.

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F:\LAW\BILLS\0837 Personnel-Disability Retirement\PS MFP Worksession Memo 5.Doc

[[Expedited]] Bill No. 37-08  
Concerning: Personnel — Disability  
Retirement - Amendments  
Revised: April 23, 2009 Draft No. 9  
Introduced: December 9, 2008  
Expires: June 9, 2010  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch.    , Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President Andrews and Councilmember Trachtenberg

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**AN [[EXPEDITED]] ACT to:**

- (1) make disability retirement procedures consistent for all employees;
- (2) create a partial incapacity disability retirement benefit;
- (3) create a total incapacity disability retirement benefit;
- (4) create a Medical Review Panel;
- (5) create a Disability Review Board;
- (6) prohibit certain applications for service connected disability retirement due to an accident filed more than a certain time after separation from County service [[or the date of the accident]];
- (7) ~~[[prohibit]]~~ limit the amount of the service connected disability pension for an employee who commits certain offenses [[from retiring on a service connected disability]];
- (8) require an independent medical examination for a disability retirement;
- (9) modify the appeal procedures for disability retirement; and
- (10) generally amend the law regarding disability retirement.

By amending

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Sections 33-38A, 33-43, 33-128, 33-129, 33-135, and 33-138

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*



24 (D) If the Chief Administrative Officer determines that a  
 25 DROP participant is eligible for a non-service connected  
 26 disability retirement, the participant must receive:

27 (i) the non-service connected disability retirement  
 28 benefit provided under Section ~~[[33-43(h)]]~~ 33-  
 29 43(i), with the benefit calculated as of the  
 30 member's DROP entry date; and

31 (ii) the DROP account balance.

32 \* \* \*

33 **33-43 Disability retirement.**

34 (a) *Applicability.* This Section applies to~~[(1)]~~ an application for disability  
 35 benefits filed [on or after March 1, 2000, by a member who is also a  
 36 member of the Police Bargaining Unit; (2) an application for disability  
 37 benefits after May 18, 1995,] by any [other] member~~;~~ or ~~[(3)]~~ a  
 38 medical reevaluation of a disability retiree under subsection (h)  
 39 ~~[[g)]]~~, regardless of when an application for disability benefits was  
 40 filed].

41 (b) *Definitions.* In this Section, the following words and phrases have the  
 42 following meanings:

43 ~~[(1)]~~ *Applicant* means any member [defined in subsection (a)] who  
 44 has filed an application for disability retirement under subsection  
 45 ~~[(d)]~~ (e)(1).

46 ~~[(2)]~~ *Certified representative* means an employee organization  
 47 certified under Section 33-79, 33-106, or 33-151 to represent a

48 bargaining unit.

49 [(3)] *Disability* [*Arbitration Board* or *Board*] *Arbitrator* means [the]  
 50 one of [3 panels] the 4 neutral arbitrators designated under subsection  
 51 [[(m)]] (n)(1) to review an appeal of the Chief Administrative  
 52 Officer's final decision regarding an application for disability benefits  
 53 [filed by any member except a member of the Police Bargaining  
 54 Unit].

55 [(4)] *Disability Review* [*Panel* or *Panel*] *Board* means the [3 medical  
 56 doctors] the administrative board appointed [as Panel members] by  
 57 the Chief Administrative Officer [in accordance with] under  
 58 subsection (c).

59 *Medical Review Panel* or *Panel* means the 4 medical doctors  
 60 appointed as Panel members by the Disability Review Board under  
 61 subsection (d).

62 [(5)] *Medical doctor* means a doctor of medicine or osteopathy who  
 63 [has] graduated from a medical school accredited by the American  
 64 Medical Association and [who] is licensed to practice medicine in [the  
 65 State of] Maryland.

66 [(6)] *Medical specialty* means a field of medicine, such as orthopedic  
 67 surgery or neurology, which requires specialized training and  
 68 certification.

69 *Occupational medicine* means a medical specialty which focuses on  
 70 the health of workers, including the ability to perform work; the  
 71 physical, chemical, biological, and social environments of the  
 72 workplace; and the health outcomes of environmental exposures.  
 73 Practitioners of occupational medicine address the promotion of

74 health in the work place and the prevention and management of  
75 occupational and environmental injury, illness, and disability.

76 Partial incapacity means a member's inability to perform one or more  
77 essential functions of the position the member holds because of  
78 impairment that is unlikely to resolve in the next 12 months and may  
79 be permanent, while the member retains the ability to perform  
80 substantial gainful activity.

81 [(7) *Police Disability Arbitration Board* or *Police Board* means the 3  
82 persons designated under subsection (m)(1) to review an appeal of a  
83 decision by the Chief Administrative Officer affecting a member of  
84 the Police Bargaining Unit's right to disability benefits.]

85 [(8)] *Residual functional capacity* means what the individual can still  
86 do, despite the individual's impairment. The County must give the  
87 term residual functional capacity the same meaning as the term is  
88 given by the U.S. Social Security Administration.

89 [(9)] *Substantial gainful activity* means [the ability to perform a  
90 substantial level of paid work that exists in significant numbers in the  
91 national economy] a level of productive work that requires significant  
92 physical or mental duties, or a combination of both, performed for pay  
93 or profit on a full-time or part-time basis. An individual is able to  
94 perform a substantial level of work if the individual is able to earn  
95 more than the U.S. Social Security Administration's current monthly  
96 earnings limit [that applies to the individual's impairment] for a  
97 disabled person. The County must give the term substantial gainful  
98 activity the same meaning as the term is given by the U.S. Social  
99 Security Administration.

100 Total Incapacity means the member's inability to perform substantial  
 101 gainful activity because of an impairment that is unlikely to resolve in  
 102 the next 12 months and may be permanent.

103 (c) Disability Review Board.

104 (1) The Disability Review Board has 5 members.

105 (2) The Executive must appoint the following [[3]] 2 voting, ex  
 106 officio members of the Board, subject to County Council  
 107 confirmation:

108 (A) the [[Director of Finance]] Chief Administrative Officer;  
 109 and

110 (B) the Director of Human Resources[; and

111 (C) the Director of the Office of Management and Budget.]]

112 Each member must serve indefinitely while that member holds  
 113 the respective office in either a permanent or acting capacity.

114 (3) The Executive must appoint for a 3 year term, subject to  
 115 Council confirmation, 1 voting member from a list of 6 active  
 116 members of the retirement [[systems]] system nominated jointly  
 117 by the certified representatives of all bargaining units.

118 (4) The Executive must appoint for a 3 year term, subject to  
 119 Council confirmation, 1 voting member who:

120 (A) is a resident of the County; and

121 (B) has never been a County employee[; and

122 (C) has experience in quasi-judicial administrative  
 123 proceedings]].

124 (5) Vacancy. The Executive must appoint, subject to Council  
 125 confirmation, a replacement to serve the unexpired term of any  
 126 member appointed under subsections (c)(3) or (4) who resigns

127 or is unable to serve due to incapacity, death, or any other  
 128 reason.

129 (6) The Director of the principal office or department for the  
 130 employee who is applying for a disability retirement must be a  
 131 member of the Board. The Director of the Office of  
 132 Management and Budget must be a member of the Board for an  
 133 employee who does not work in a principal office or  
 134 department.

135 (7) Compensation. Each member serves on the Board without  
 136 additional compensation from the County and without  
 137 compensation for that service from any other source.

138 (d) Selection of the [Disability] Medical Review Panel.

139 (1) The [Chief Administrative Officer] Disability Review Board  
 140 must appoint [the 3] 4 members of the [Disability] Medical  
 141 Review Panel from a list of 10 medical doctors [agreed upon by  
 142 the certified representatives and the County] provided by an  
 143 impartial medical organization retained by the Chief  
 144 Administrative Officer.

145 (2) The [Chief Administrative Officer] Disability Review Board  
 146 must [ensure that no 2 members of the Panel practice in the  
 147 same medical specialty] appoint at least 2 members who are  
 148 either:

149 (A) certified by the American Board of Preventive Medicine  
 150 (or a successor organization) as a specialist in  
 151 occupational medicine; or

152 (B) certified in a different medical specialty and have at least  
 153 10 years of experience practicing occupational medicine.

- 154 (3) (A) The [Chief Administrative Officer] Disability Review  
155 Board must appoint members under subsection ~~[(c)]~~  
156 (d)(1) for staggered 3-year terms. To implement the  
157 staggered terms, the [Chief Administrative Officer]  
158 Board must appoint the first member to a 3-year term, the  
159 second member to a one-year term, and the third and  
160 fourth [member] members to a 2-year term. After these  
161 initial appointments, the [Chief Administrative Officer]  
162 Board must appoint all members to 3-year terms, except  
163 for any member appointed under subsection ~~[(c)]~~ (d)(6)  
164 to fill a vacancy [created by a Panel member's death,  
165 disability, resignation, non-performance of duty or other  
166 cause].
- 167 (B) After the [Chief Administrative Officer] Disability  
168 Review Board appoints or reappoints a Panel member,  
169 the [Chief Administrative Officer] Board must promptly  
170 [provide] send each certified representative [with] a copy  
171 of the document confirming the appointment.
- 172 (4) [At the expiration of] When a Panel member's term expires, the  
173 Panel member [is eligible for reappointment] may be  
174 reappointed to a new 3-year term [unless, at any time within 30  
175 days to 60 days prior to the expiration of the term, a certified  
176 representative notifies the County and the other certified  
177 representatives or the County notifies the certified  
178 representatives that it objects to the reappointment of the Panel  
179 member. If there is no objection, the Panel member is eligible  
180 to serve an additional term or terms].

181 (5) [In the event] If a Panel member declines to be reappointed to  
 182 the Panel, [a new medical doctor must be appointed by] the  
 183 [Chief Administrative Officer] Disability Review Board must  
 184 appoint a new Panel member from a list of 5 medical doctors  
 185 [agreed upon by the certified representatives and the County]  
 186 provided by an impartial medical organization retained by the  
 187 County.

188 (6) If a vacancy on the Panel is created by a Panel member's death,  
 189 disability, resignation, non-performance of duty, or other cause,  
 190 the [Chief Administrative Officer] Disability Review Board  
 191 must appoint a medical doctor to complete the Panel member's  
 192 term[. The Chief Administrative Officer must appoint the  
 193 Panel member] from a list of 5 medical doctors [agreed upon by  
 194 the certified representatives and the County] provided by an  
 195 impartial medical organization retained by the County.

196 (7) The County must pay the impartial medical organization  
 197 retained by the County and each Panel member reasonable  
 198 compensation, as determined by the Chief Administrative  
 199 Officer, for [his or her] services rendered.

200 [(d)] (e) *Disability retirement procedures.*

201 (1) An application for disability retirement may be filed with the  
 202 Chief Administrative Officer by:

203 (A) a member;

204 (B) a certified representative on behalf of a represented  
 205 member; or

206 (C) the department, office, or agency head under subsection

207 [(k)] (l).

- 208 (2) [The Disability] Three members of the Medical Review Panel  
 209 must consider [an] each application for disability retirement  
 210 benefits filed by a member or a certified representative. [The  
 211 Panel must determine if an applicant is eligible for non-service-  
 212 connected disability or service-connected disability in  
 213 accordance with subsections (e)(2) through (4) and subsection  
 214 (f).]
- 215 (3) The applicant must give the Panel all medical records beginning  
 216 5 years before the applicant becomes a County employee.  
 217 Subject to the limitations in subsection ~~[(f)]~~ (g)(4)(E), the  
 218 Panel may consider any information or material submitted by  
 219 the applicant, the certified representative, or the County.
- 220 (4) Before the Panel meets to review an application for a member  
 221 other than a member of the Firefighter/Rescuer Bargaining  
 222 Unit, the Panel must advise each party of the deadline [date for  
 223 submitting] to submit information to the Panel. The Panel must  
 224 [allow] give each party a reasonable amount of time [for the  
 225 parties] to submit additional information, and may extend the  
 226 deadline at the request of either party for good cause [shown].
- 227 (5) Except for information from a member of the  
 228 Firefighter/Rescuer Bargaining Unit, the Panel must not accept  
 229 or consider information from a member if the information is  
 230 received after the established deadline date unless the  
 231 information is related to:
- 232 (A) [the applicant's] a reinjury to the applicant that occurred  
 233 or was diagnosed after the deadline [date]; or

- 234 (B) a change in the applicant's medical condition that  
 235 occurred or was diagnosed after the deadline [date].
- 236 (6) The Panel must meet [as a body] in person and review and  
 237 consider all evidence submitted to it no later than 60 [calendar]  
 238 days after the application is filed. A majority vote [on a  
 239 decision] of 3 members is required to take any action [in  
 240 accordance with the provisions of] under this Section. [will  
 241 prevail. If only 2 Panel members participate in the decision-  
 242 making process, the vote on a decision to take any action must  
 243 be unanimous. No action may be taken upon a decision made  
 244 by one Panel member] A dissenting member must issue a  
 245 minority recommendation.
- 246 (7) [Within 30 calendar days after the Panel's last meeting at which  
 247 the application was considered, the] The Panel must issue a  
 248 written recommendation to the [Chief Administrative Officer]  
 249 Disability Review Board [regarding whether the applicant  
 250 meets the criteria for disability retirement benefits for non-  
 251 service-connected disability in accordance with subsections  
 252 (e)(2), (3) and (4) or service-connected disability in accordance  
 253 with subsection (f)] on the following medical issues:
- 254 (A) Is the applicant mentally or physically incapable of  
 255 performing one or more essential duties of the applicant's  
 256 job as described in the current job description?
- 257 (B) Is the applicant's medical condition likely to be  
 258 permanent?
- 259 (C) Did the applicant sustain the injury or undergo the hazard  
 260 while performing his or her job duties? If not, did the

261 applicant sustain the incapacitating injury or illness after  
 262 becoming an employee?

263 (D) If the disability is based on a condition that was  
 264 aggravated, is the workplace aggravation the proximate  
 265 cause of the applicant's incapacity?

266 (E) Does the applicant have the residual functional capacity  
 267 to perform substantial gainful activity?

268 (8) (A) [If] Before making its recommendation, the Panel [is  
 269 unable to make a determination based on the evidence  
 270 presented to it, the Panel may] must:

271 (i) direct the applicant to undergo [a] an independent  
 272 medical examination (including all relevant  
 273 medical tests) by a medical doctor who is not a  
 274 member of the [Disability Review] Panel, unless  
 275 the Panel finds that a medical examination is  
 276 unnecessary; and

277 (ii) if required for the Panel to make a  
 278 recommendation [under Section 33-43(i)(2)] as to  
 279 residual functional capacity or substantial gainful  
 280 capacity, request an independent vocational  
 281 assessment.

282 (B) The County must pay the cost of the examination and  
 283 assessment.

284 (C) The Panel must issue its written recommendation within  
 285 30 [calendar] days after the Panel receives the later of:

286 (i) the full report from the medical doctor who  
 287 conducted the examination; or

- 288 (ii) the full report of the results of the independent  
 289 vocational assessment.
- 290 (9) Within [20 calendar] 45 days [following receipt of] after  
 291 receiving the Panel's written recommendation, the [Chief  
 292 Administrative Officer or designee] Disability Review Board  
 293 must issue a final decision regarding whether the applicant  
 294 meets the criteria for disability retirement benefits for non-  
 295 service-connected disability [in accordance with] under  
 296 subsection ~~[(e)]~~ (f) or service-connected disability [in  
 297 accordance with] under subsection ~~[(f)]~~ (g) and, if the  
 298 applicant meets the requirements for service-connected  
 299 disability, whether the applicant is eligible for benefits based  
 300 upon total or partial incapacity. The Board may:
- 301 (A) consider any written evidence presented by the applicant  
 302 or the County;
- 303 (B) review the applicant's ~~[[personal]]~~ personnel file;
- 304 (C) review the applicant's ~~[[worker's]]~~ workers  
 305 compensation file;
- 306 (D) review any accidental injury reports; ~~[[and]]~~
- 307 (E) not consider any medical record that was not presented to  
 308 the Medical Review Panel, and
- 309 (F) remand the case to the Medical Review Panel for further  
 310 consideration.
- 311 (10) A disability retirement [is effective] takes effect on the earlier  
 312 of:

- 313 (A) the date a member exhausts all accrued sick leave,  
 314 donated sick leave, and accrued compensatory leave [in  
 315 excess of] over 80 hours, if any, or [on]  
 316 (B) the date [the application is approved by] the [Chief  
 317 Administrative Officer] Board approves the application [,  
 318 whichever comes first].

319 (11) [For a Group G member, the] The amount of any lump sum  
 320 retroactive disability retirement benefit must be reduced by the  
 321 total amount of any temporary total disability, temporary partial  
 322 disability, or permanent partial disability payments that the  
 323 County [made] paid to the employee under the Workers  
 324 Compensation laws after [the effective date of] the disability  
 325 retirement took effect.

326 [(e)] (f) \* \* \*

327 [(f)] (g) *Service-connected disability retirement.*

- 328 (1) A member may be retired on a service-connected disability  
 329 retirement if:  
 330 (A) the member is totally or partially incapacitated [[for duty  
 331 or partially and permanently incapacitated for duty]] as  
 332 the natural and proximate result of an accident occurring,  
 333 or an occupational disease incurred or condition  
 334 aggravated, while in the actual performance of duty;  
 335 (B) the incapacity is not due to the member's willful  
 336 negligence;  
 337 (C) the incapacity is likely to be permanent; [and]  
 338 (D) the member is unable to perform the duties of either:

- 339 (i) the occupational classification to which the  
 340 member was assigned [at the time] when the  
 341 disability occurred; or
- 342 (ii) a position of comparable status [within] in the  
 343 same department for which the member is  
 344 qualified;
- 345 (E) [[the member has not committed an offense that would  
 346 justify removal for cause;
- 347 (F)]] for an accidental injury, the member:
- 348 (i) reports the claimed accidental injury within 30  
 349 days after [[at]] the time of the event; and
- 350 (ii) applies for disability retirement within 1 year after  
 351 separation from County service[; and
- 352 (iii) applies for disability retirement within 5 years  
 353 after the date of the claimed accident, unless the  
 354 Board waives this requirement for good cause]].

355 \* \* \*

356 [(g)] (h) *Medical reexamination of disability retiree.* The Chief  
 357 Administrative Officer [[may]] must require a member receiving  
 358 disability pension payments to undergo a yearly physical examination  
 359 during the [5-year period following] 5 years after retirement, and once  
 360 in every [3-year period] 3 years thereafter, until age 55 [if] for a  
 361 member of group B, E, F, or G, or age 60 [if] for a member of group  
 362 A or H, unless the CAO finds that a physical examination in specific  
 363 case is unnecessary. The Chief Administrative Officer must review  
 364 the findings of the physical examination and take appropriate action,  
 365 which may include submitting the results of the evaluation to the

366 [Disability] Medical Review Panel and the Disability Review Board  
 367 for a redetermination [as to] whether the individual qualifies for  
 368 disability benefits in accordance with subsection [(d)] (e). If a  
 369 member [refuses to] does not submit to the examination, the Chief  
 370 Administrative Officer may reduce or discontinue any disability  
 371 pension payments which the member receives.

372 ~~[(h)]~~ (i) \* \* \*

373 (i) (j) *Amount of pension at service-connected disability retirement.*

374 (1) Total incapacity. The County must pay a member[, other than a  
 375 Group G member,] who retires on service-connected disability  
 376 retirement with total incapacity an annual pension calculated  
 377 under Section 33-42(b)(1), [subject to the following exceptions]  
 378 except that:

379 (A) the County must substitute final earnings for average  
 380 final earnings; and

381 (B) the pension must be at least [66 2/3 percent] 70% of the  
 382 member's final earnings.

383 (2) [The County must pay a Group G member who retires on a  
 384 service-connected disability retirement an annual pension  
 385 calculated under Section 33-42(b)(1), except that the County  
 386 must substitute final earnings for average final earnings.]  
 387 However, if [this] the benefit calculation under Section 33-  
 388 42(b)(1) is greater than any other benefit under this subsection,  
 389 the County must pay a Group G member who retires on a  
 390 service-connected disability retirement between June 26, 2002,  
 391 and June 30, 2007, a pension based on the member's average

392 final earnings if that member's average final earnings result in a  
 393 greater benefit than final earnings.

394 (3) [The County must pay a Group G member who retires on a  
 395 service-connected disability retirement an annual pension  
 396 calculated under Section 33-42(b)(1), but the benefit must be at  
 397 least 70 percent of final earnings if the Chief Administrative  
 398 Officer finds, based on a recommendation from the Disability  
 399 Review Panel, that] The Disability Review Board, based on a  
 400 recommendation from the Medical Review Panel, must find  
 401 total incapacity if the member's service-connected disability is  
 402 severe enough to meet the Social Security Administration's  
 403 requirements for disability, meaning that the member is unable  
 404 to engage in any substantial gainful activity because of a  
 405 medically determinable physical or mental impairment that can  
 406 be expected to end in death or has lasted, or can be expected to  
 407 last, for a continuous period of at least 12 months. The member  
 408 does not have to qualify for Social Security disability benefits  
 409 to be eligible for benefits under this subsection.

410 (A) The Panel must base its [determination] recommendation  
 411 of whether [or not] an individual is able to engage in any  
 412 substantial gainful activity on an assessment from an  
 413 independent vocational expert that considers the  
 414 member's age, education, work experience, transferable  
 415 skills, and residual functional capacity.

416 (B) The Panel must determine the member's residual  
 417 functional capacity and provide this information to the  
 418 independent vocational expert.

419 (C) A Panel determination that the member's service-  
 420 connected disability is severe enough to be considered a  
 421 disability by the Social Security Administration is not a  
 422 recommendation that the member is entitled to, or should  
 423 be granted, a disability benefit by the Social Security  
 424 Administration.

425 (D) If a member has already been granted disability benefits  
 426 by the [U.S.] Social Security Administration when the  
 427 member applies for a service-connected disability  
 428 pension, the County must pay the member a pension of at  
 429 least [70 percent] 70% if the Disability Review [Panel]  
 430 Board finds that the award of disability benefits from the  
 431 Social Security Administration was based primarily on  
 432 the same medically determinable physical or mental  
 433 impairment on which the [Disability Review Panel]  
 434 Board awards the member a service-connected disability  
 435 benefit.

436 (4) The County must pay a [Group G] member who retires with  
 437 partial incapacity on a service-connected disability retirement  
 438 an annual pension calculated under Section 33-42(b)(1), but the  
 439 benefit must be at least  $52\frac{1}{2}\%$  [percent] of final earnings [if the  
 440 Chief Administrative Officer finds, based on a recommendation  
 441 from the Disability Review Panel, that:

442 (A) the member meets the standards to receive a service-  
 443 connected disability benefit under subsection (f); and

444 (B) the member is not eligible to receive a benefit under  
 445 subsection (i)(3)].

- 446 (5) (A) The County must increase the partial incapacity service-  
447 connected disability pension benefit of a [Group G]  
448 member calculated under Section 33-42(b)(1), from a  
449 benefit of at least 52 ½ [percent] % to a benefit of at least  
450 70 [percent] %, if:
- 451 (i) the [U.S.] Social Security Administration awards  
452 disability benefits to the member;
  - 453 (ii) the member submits all relevant information about  
454 the award of disability benefits from the Social  
455 Security Administration to the [Disability] Medical  
456 Review Panel within 60 days after the member  
457 receives the award;
  - 458 (iii) the Disability Review [Panel] Board, based on a  
459 recommendation from the Medical Review Panel,  
460 finds that the award of disability benefits from the  
461 Social Security Administration was based  
462 primarily on the same medically determinable  
463 physical or mental impairment on which the  
464 Disability Review [Panel] Board originally  
465 awarded the member a service-connected disability  
466 benefit; and
  - 467 [(a)] (iv) the member applies for disability benefits with  
468 the Social Security Administration within 90 days  
469 after the [date on which the Chief Administrative  
470 Officer] Board notified the member that the  
471 [amount of the] service-connected disability  
472 pension benefit would be calculated [under Section

473 33-42(b)(1), but at least 52 ½ percent; or] as a  
 474 partial incapacity.

475 [(b) the Chief Administrative Officer awards a  
 476 service-connected disability pension benefit  
 477 calculated under Section (b)(1), but at least  
 478 52 ½ percent to the member between March  
 479 1, 2000, and December 1, 2003, and the  
 480 member applies for disability benefits with  
 481 the Social Security Administration no later  
 482 than February 29, 2004.]

483 (B) [For] If a member [who] qualifies for an increased  
 484 pension benefit under [subsection (5)] subparagraph (A)  
 485 [above], the County must increase the member's service-  
 486 connected pension retroactively to the date [on which]  
 487 when the pension began.

488 \* \* \*

489 (7) The County must pay a Group F member who retires on a  
 490 service-connected disability retirement with total incapacity on  
 491 or after June 26, 2002, an annual pension calculated under  
 492 subsection [(i)] (j)(1). However, if [the] a greater benefit results  
 493 from the calculation under Section 33-42(b)(1), the County  
 494 must pay a Group F member a pension based on the member's  
 495 average final earnings if that member's average final earnings  
 496 result in a greater benefit than final earnings.

497 (8) If a member is convicted of a felony, the County must not pay a  
 498 service-connected disability pension that is greater than a  
 499 pension calculated by using the member's final earnings when

500 the offense was committed.

501 ~~[(j)]~~ (k) *Adjustment or cessation of disability pension payments.*

502 (1) If a member receiving service-connected disability pension  
503 payments reaches the first day of the month ~~[following]~~ after  
504 the member's normal retirement date, the amount of pension  
505 then payable must not be less than the amount that would have  
506 been payable under ~~[the provisions of]~~ Section 33-45(c),~~]~~ if the  
507 member had terminated service ~~[on]~~ when the ~~[date]~~ disability  
508 pension ~~[commenced]~~ began and had not elected a return of  
509 member contributions with credited interest.

510 (2) (A) The Chief Administrative Officer may reduce the amount  
511 of the disability pension payments of a member retired  
512 with total incapacity who:

513 (i) has not reached the normal retirement date; and

514 (ii) is engaged in, or is able to engage in, an  
515 occupation that pays more than the difference  
516 between ~~[the amount of]~~ the disability pension  
517 payments and the current maximum earnings of  
518 the occupational classification from which the  
519 ~~[employee]~~ member was disabled.

520 (B) ~~[For]~~ If a member other than a Group F member ~~[who]~~  
521 meets the criteria in subparagraph (A), the Chief  
522 Administrative Officer may reduce the member's  
523 disability ~~[person]~~ pension payments until ~~[the amount~~  
524 ~~of]~~ the disability pension payments plus the amount that  
525 the employee earned or is able to earn equals the

526 maximum earnings of the occupational class from which  
527 the member was disabled.

528 (C) [For] If a Group F member [who] receives a non-service  
529 connected disability pension and [who] meets the criteria  
530 in subparagraph (A), the Chief Administrative Officer  
531 may reduce the member's disability pension payments  
532 until [the amount of] the disability pension payments plus  
533 the amount the employee earned or is able to earn equals  
534 120 percent of the maximum earnings of the occupational  
535 class from which the employee was disabled. [[If a  
536 member receives a disability retirement pension from  
537 another employer for the same impairment, the Chief  
538 Administrative Officer may reduce the member's  
539 disability pension payments by the amount of the other  
540 disability retirement pension.]]

541 (D) If a member receives a disability retirement pension from  
542 another employer for the same impairment, the Chief  
543 Administrative Officer may reduce the member's  
544 disability pension payments by the amount of the other  
545 disability retirement pension.

546 (3) If the earnings capacity of a disability retiree with a total  
547 incapacity changes, the Chief Administrative Officer may  
548 change the amount of the disability retirement pension. [For  
549 the purpose of] In this subsection, "disability pension" is the  
550 amount of pension payable without election of a pension  
551 payment option.

- 552 (A) For a disability retiree other than a group F member, [the  
 553 Chief Administrative Officer must ensure that] the  
 554 amount of the revised pension [does] must not exceed:
- 555 (i) the original disability retirement pension plus all  
 556 applicable cost-of-living increases; or
- 557 (ii) an amount that, when added to the amount the  
 558 member earns or is able to earn, equals the  
 559 maximum earnings of the occupational  
 560 classification from which the member was  
 561 disabled.
- 562 (B) For a Group F member who receives a non-service  
 563 connected disability pension, [the Chief Administrative  
 564 Officer must ensure that] the amount of the revised  
 565 pension must not exceed:
- 566 (i) the original disability retirement pension plus all  
 567 applicable cost-of-living increases; or
- 568 (ii) an amount that, when added to the amount [that]  
 569 the member earns or is able to earn, equals 120  
 570 percent of the maximum earnings of the  
 571 occupational classification from which the member  
 572 was disabled.
- 573 (4) A member who receives a disability retirement pension for a  
 574 total incapacity must submit to the Chief Administrative Officer  
 575 by May 30 of each year a copy of that portion of the member's  
 576 federal income tax return which shows the member's [[earned]]  
 577 income. If a member [receiving] who receives disability  
 578 pension payments [fails or refuses to] does not supply the Chief

579 Administrative Officer [whatever] any information [is  
 580 determined necessary] the Chief Administrative Officer needs  
 581 to [make a decision on] decide the amount of retirement pay  
 582 legally due, the Chief Administrative Officer must suspend the  
 583 member's pension payments [must be discontinued] until the  
 584 member submits the [requested] needed information.

585 (5) If a member [receiving] who receives disability pension  
 586 payments returns to [the service of the] County [[employment]]  
 587 service or is appointed or elected to any office, the salary or  
 588 compensation of which is paid wholly or in part by the County,  
 589 the Chief Administrative Officer must stop the member's  
 590 pension payments [will cease,] and the [individual will again  
 591 become a] member [of] must rejoin the appropriate retirement  
 592 [[system]] plan and resume member contributions.

593 (6) For [those employees] any employee who enrolled or re-  
 594 enrolled in the retirement system on or after July 1, 1978, the  
 595 member's disability retirement benefit for any month must be  
 596 integrated with the primary disability benefits received from  
 597 Social Security, and the total benefits from both sources must  
 598 not exceed 100% of the member's average final earnings, [of  
 599 the member; provided, however, that this limitation] This limit  
 600 does not apply to [the] cost-of-living adjustments [issued  
 601 pursuant to] made under Section 33-44(c).

602 (7) The Chief Administrative Officer must not reduce the service-  
 603 connected disability pension payments of a Group F or G  
 604 member by earned income received from [sources] any source  
 605 other than County Government employment.

606 [(k)] (l) *Administrative disability retirement.* [Whenever] If any member  
 607 becomes disabled [or incapacitated] and is demonstrably not capable  
 608 of performing the duties and responsibilities of the position to which  
 609 the member is assigned at an acceptable level of competence [for  
 610 medical reasons] because of the member's disability, the Department  
 611 or Office Director must notify the member [must be notified by the  
 612 head of the department, office or agency] that [in consideration]  
 613 because of the member's [medical condition] disability, the member  
 614 should apply for a disability retirement [application should be  
 615 initiated]. If the member [fails or refuses to make an application] does  
 616 not apply for disability retirement, the [department, office or agency  
 617 head] Director may [initiate] apply for a disability retirement  
 618 [application] on behalf of the member. [All] The Director must  
 619 transmit all pertinent information, including the member's attendance  
 620 record, job performance record, and medical record, [must be  
 621 transmitted] to the [Disability] Medical Review Panel.

622 [(l)] (m) *Appeal procedures.*  
 623 (1) An applicant [who is a member of the Police Bargaining Unit]  
 624 or the certified representative on behalf of the [Police  
 625 Bargaining Unit] applicant may appeal a decision of the [Chief  
 626 Administrative Officer] Disability Review Board that affects  
 627 the member's right to disability benefits to the [Police]  
 628 appropriate Disability [Arbitration Board] Arbitrator. [An  
 629 applicant who is not a member of the Police Bargaining Unit, or  
 630 the certified representative on behalf of the applicant, may  
 631 appeal the written decision of the Chief Administrative Officer  
 632 to one of 3 Disability Arbitration Boards.] An applicant must

633 file an appeal within [[20]] [calendar] 30 days [of] after [the  
 634 date on which] the [[applicant receives the]] [Chief  
 635 Administrative Officer's] Board's decision is mailed to the  
 636 applicant.

637 (2) The [Police] Disability [Arbitration Board] Arbitrator must  
 638 consider [appeals] each appeal filed by [members of the Police  
 639 Bargaining Unit. The 3 Disability Arbitration Boards must  
 640 consider all other appeals on a rotating basis in the order in  
 641 which the County receives the appeals] an applicant within a  
 642 reasonable time. The Arbitrator must not consider any medical  
 643 record that was not presented to the Medical Review Panel.

644 [(3) After an applicant files an appeal, the appropriate Disability  
 645 Arbitration Board or Police Disability Arbitration Board with  
 646 whom the appeal is filed must convene within a reasonable time  
 647 and consider the appeal.]

648 [(4)] (3) The appeal and judicial review proceedings [are] must be  
 649 governed by the Maryland Uniform Arbitration Act, except that  
 650 [a Board] an Arbitrator's decision must not be vacated [on the  
 651 ground that] because the applicant who filed the appeal [[is not  
 652 a bargaining unit member and]] did not agree to arbitrate the  
 653 appeal.

654 [(5)] (4) The [Chairpersons of the Disability Arbitration Boards and  
 655 Police Disability Arbitration Board] Disability Arbitrator must[,  
 656 for the appeals before them]:

657 (A) decide all issues on prehearing procedures, including any  
 658 issue related to discovery; and

659 (B) rule on all issues of law that arise before the hearing[,]  
 660 unless ruling on the issue would decide the appeal.

661 [(6)] (5) The Disability [Arbitration Boards and Police Disability  
 662 Arbitration Board] Arbitrator must render decisions quickly.  
 663 The Disability [Arbitration Boards and Police Disability  
 664 Arbitration Board] Arbitrator should issue written decisions on  
 665 appeals within 30 [calendar] days after the hearing or after  
 666 receiving any post-hearing briefs.

667 [(m)] (n) *Disability [Arbitration Boards and Police Disability Arbitration*  
 668 *Board] Arbitrators.*

669 (1) [(A) The County Executive must appoint a different  
 670 neutral arbitrator to be the Chairperson of each Disability  
 671 Arbitration Board.] The County Executive must [select  
 672 the] appoint 4 neutral [arbitrators] Disability Arbitrators  
 673 from a list of 6 arbitrators agreed [upon] on by the  
 674 County and the certified representatives that represent all  
 675 bargaining units [except for the Police Bargaining Unit].  
 676 To the extent possible, the 6 neutral arbitrators on the list  
 677 should be experienced in law and occupational medicine.  
 678 The County Council must confirm the appointment of  
 679 [the Chairperson of each Disability Arbitration Board  
 680 must be confirmed by the County Council] each  
 681 Disability Arbitrator. The [County] Chief Administrative  
 682 Officer must give each certified representative a copy of  
 683 the Council resolution confirming the appointment or  
 684 reappointment of each [Chairperson] Disability  
 685 Arbitrator promptly after the Council's action.

686           [(B) The County Executive must appoint a neutral arbitrator  
 687           to be Chairperson of the Police Disability Arbitration  
 688           Board. The neutral arbitrator must be selected by the  
 689           County and the certified representative of the Police  
 690           Bargaining Unit either by agreement or through the  
 691           processes of the American Arbitration Association. To  
 692           the extent possible, the neutral arbitrator should be  
 693           experienced in law and occupational medicine. The  
 694           appointment of the Chairperson of the Police Disability  
 695           Arbitration Board must be confirmed by the County  
 696           Council.]

697           (2) Each neutral arbitrator [appointed by the County Executive  
 698           under paragraph (1)] must serve for a term of 3 years. [At the  
 699           expiration of the] When an arbitrator's term expires, the  
 700           Executive may reappoint the arbitrator [is eligible for  
 701           reappointment] to a new 3-year term unless, at any time within  
 702           30 to 60 days [prior to the expiration of] before the [3-year]  
 703           term is scheduled to expire, either a certified representative  
 704           [gives written notice to] notifies the [County] Chief  
 705           Administrative Officer or the [County gives written notice to]  
 706           Chief Administrative Officer notifies the certified  
 707           representatives that [it] the party objects to the [neutral]  
 708           arbitrator serving another term. If no objection is filed, the  
 709           Executive may appoint the arbitrator [is eligible for  
 710           appointment] to [an additional] another term.

711           (3) If the neutral arbitrator declines to be reappointed, dies, resigns,  
 712           or for other cause is unable or ineligible to serve [on one of the]

713 as a Disability [Arbitration Boards or the Police Disability  
714 Arbitration Board] Arbitrator, [a new arbitrator must be  
715 appointed by] the [County] Executive must appoint a new  
716 arbitrator under paragraph (1).

717 (4) The County must pay all reasonable fees and expenses of [the  
718 arbitrators] each arbitrator, as determined by the Chief  
719 Administrative Officer, except that a certified representative  
720 representing an applicant who is a member of the Office,  
721 Professional or Technical or Service, Labor and Trades  
722 Bargaining Unit must pay any fee resulting from the  
723 cancellation of a scheduled hearing if the certified  
724 representative:

725 (A) causes a hearing to be canceled and the application  
726 remanded to the Disability Review [Panel] Board; or

727 (B) causes a hearing to be canceled and rescheduled on a  
728 later date.

729 (5) [The applicant, or the certified representative on behalf of the  
730 applicant, must designate an individual to serve as a member of  
731 the Disability Arbitration Board that will consider and decide  
732 the applicant's appeal. The applicant must designate an  
733 individual to serve as a member of the Police Disability  
734 Arbitration Board. The Chief Administrative Officer must  
735 designate an individual to serve on the Disability Arbitration  
736 Board or Police Disability Arbitration Board that will consider  
737 and decide the applicant's appeal. The applicant, or the  
738 certified representative on behalf of the applicant, and the  
739 County, respectively, may designate Board members on a case-

740 by-case basis according to each party's chosen procedure.  
 741 There must be no restriction on who may serve as the designee  
 742 of the applicant or the County, except that no member of the  
 743 Board that will consider and decide an appeal may be involved  
 744 in, or be a witness to, any matter that is before that Board.]

745 [(6) Each party, including participating agencies, must be  
 746 responsible for the fees and expenses of its respective  
 747 members.] Each party, including participating agencies, must  
 748 [also be responsible for] pay its own witness fees and expenses.

749 **33-128. Definitions.**

750 In this Division, the following words and phrases have the following meanings:

751 [(a)] *Administrator* means either the Chief Administrative Officer or the  
 752 entity that contracts with the County to administer this disability plan.

753 [(b)] *Applicant* means an employee who has filed an application for  
 754 benefits under Division 2 of Article VIII, or for whom the Chief  
 755 Administrative Officer has filed an application.

756 [(c)] *Certified representative* means an employee organization certified  
 757 under Sections 33-79, 33-106, or 33-151 to represent a bargaining unit.

758 [(d)] *Continued non-service-connected disability* means a condition of the  
 759 employee that:

- 760 (1) continues after [the close of] the period of initial non-service-  
 761 connected disability closes;
- 762 (2) makes the employee unable to engage in any available  
 763 employment commensurate with the employee's training or  
 764 retraining, education, and experience [of the employee]; and
- 765 (3) is likely to be permanent.

766 [(e)] *Continued service-connected disability for a non-public safety*  
 767 *employee* means a condition of a non-public safety employee that:

- 768 (1) continues after [the close of] the period of initial service-  
 769 connected disability closes;
- 770 (2) makes the employee unable to engage in available employment  
 771 commensurate with the employee's training or retraining,  
 772 education, and experience [of the employee]; and
- 773 (3) is likely to be permanent.

774 [(f)] *Continued service-connected disability for a public safety employee*  
 775 means a condition of a public safety employee that:

- 776 (1) continues after [the close of] the period of initial service-  
 777 connected disability closes;
- 778 (2) makes the employee unable to:
- 779 (A) engage in available employment commensurate with the  
 780 employee's training or retraining, education, and  
 781 experience [of the employee]; and
- 782 (B) earn substantially similar final earnings; and
- 783 (3) is likely to be permanent.

784 [(g)] *County* means Montgomery County Government and, when  
 785 applicable, any agency that adopts this plan under an adoption agreement  
 786 approved by the Chief Administrative Officer.

787 [(h)] *Disability [Arbitration Board or Board] Arbitrator* means 1 of the  
 788 ~~[[3]]~~ 4 persons designated under Section [33-43A(m)] 33-43(m) to review an  
 789 appeal of the final decision of the ~~[[Administrator]]~~ Disability Review Board  
 790 regarding an application for disability benefits.

791 [(i)] *Disability Review [Panel or Panel] Board or Board* means the [3  
 792 medical doctors appointed as Panel members by the Chief Administrative

793 Officer under Section 33-43A(c)] administrative board established under  
 794 Section 33-43(c).

795 [(j)] *Employee* means [an] a County employee [of the County] who:

- 796 (1) participates in the retirement savings plan under this Article;  
 797 and  
 798 (2) is regularly scheduled to work 20 hours or more per week.

799 [(k)] *Final earnings* means the annual average of the regular salary of an  
 800 employee less any shift pay differential for the 18-month period immediately  
 801 before the disability or any period of 18 consecutive months, whichever is  
 802 greater, except that final earnings for an employee who commits a felony  
 803 must not be greater than the employee's average final earnings calculated for  
 804 the 18 month period immediately before the date the offense was committed.

805 [(l)] *Initial non-service-connected disability* means a condition of an  
 806 employee that:

- 807 (1) is the natural and proximate result of an accident, illness, or  
 808 injury;  
 809 (2) is not due to the employee's willful misconduct or willful  
 810 negligence [of the employee];  
 811 (3) makes the employee incapable of performing the job that the  
 812 employee performed immediately before the accident, illness,  
 813 or injury; and  
 814 (4) is not an initial service-connected disability.

815 [(m)] *Initial service-connected disability* means a condition of an employee  
 816 that:

- 817 (1) is the natural and proximate result of an accident, illness, or  
 818 injury occurring, an occupational disease incurred, or a

819 condition aggravated while in the performance of duty as an  
820 employee;

821 (2) is not due to the employee's willful misconduct or willful  
822 negligence [of the employee]; and

823 (3) makes the employee incapable of performing the job that the  
824 employee performed immediately before the accident, illness,  
825 or injury.

826 [(n)] *Medical doctor* means a doctor of medicine or osteopathy who [has]  
827 graduated from a medical school accredited by the American Medical  
828 Association and [who] is licensed to practice medicine in [the State of]  
829 Maryland.

830 Medical Review Panel or Panel means the 4 medical doctors appointed by  
831 the Disability Review Board under Section 33-43(d).

832 [(o)] *Non-public safety employee* means any employee who is not a public  
833 safety employee.

834 [(p)] *Plan* means the disability benefits plan established under this  
835 Division.

836 [(q)] *Public safety employee* means any employee who is a:

837 (1) sworn, ranking officer of the [Montgomery County] Police  
838 Department;

839 (2) paid firefighter, paid fire officer, or paid rescue service  
840 employee of the [Montgomery County Department of] Fire and  
841 Rescue [Services] Service;

842 (3) sworn deputy sheriff;

843 (4) [Montgomery County] correctional officer; or

844 (5) correctional staff member, if designated as a public safety  
845 employee by the Chief Administrative Officer.

846 **33-129. Disability benefits.**

847 (a) *Initial non-service-connected disability benefits.*

848 (1) An employee is entitled to receive disability benefits if the  
849 [administrator determines] Disability Review Board finds that  
850 the employee has:

851 (A) incurred an initial non-service-connected disability; and

852 (B) worked for the County for the 6 months immediately  
853 [preceding] before the disability.

854 (2) The employee [is entitled to] may receive disability benefits  
855 subject to this plan for [a period of]:

856 (A) 12 consecutive months for a public safety employee; and

857 (B) 36 consecutive months for a non-public safety employee.

858 (b) *Continued non-service-connected disability benefits.* Before the end  
859 of the distribution period for initial non-service-connected disability  
860 benefits, the [administrator] Disability Retirement Board must re-  
861 evaluate the employee to determine if the employee satisfies the  
862 requirements for a continued non-service-connected disability. If the  
863 employee does not meet the requirements for a continued non-service  
864 connected disability, the payment of disability benefits must stop. If  
865 [a participant] the employee meets the requirements for a continued  
866 non-service connected disability, the payment of disability benefits  
867 must continue, subject to this plan.

868 (c) *Temporary disability.* In extenuating circumstances, the  
869 [administrator] Disability Retirement Board may:

870 (1) waive the requirement that an employee's disability is likely to  
871 be permanent for continued service-connected or non-service-  
872 connected disability benefits; and

873 (2) approve temporary disability benefits for one or more one-year  
874 periods until the [administrator determines] Board finds that the  
875 disability:

876 (A) has ended; or

877 (B) qualifies as a continued disability.

878 (d) *Initial service-connected disability benefits.* [If the administrator  
879 determines that an employee has incurred an initial service-connected  
880 disability, the] An employee [is entitled to] may receive disability  
881 benefits for a period of 36 consecutive months, subject to this plan, if  
882 the Disability Review Board finds that:

883 (A) the employee has incurred an initial service-connected  
884 disability;

885 (B) [[the employee has not committed an offense that would  
886 justify removal for cause;

887 (C)] for an accidental injury, the employee:

888 (i) reports the claimed accidental injury within 30  
889 days after [[at]] the time of the event; and

890 (ii) applies for disability retirement within 1 year after  
891 separation from County service[[; and

892 (iii) applies for disability retirement within 5 years  
893 after the date of the claimed accident, unless the  
894 Board waives this requirement for good cause]].

895 (e) *Continued service-connected disability benefits.*

896 (1) Before the end of the distribution period for initial service-  
897 connected disability benefits, the [administrator] Disability  
898 Review Board must re-evaluate the employee to determine if  
899 the employee satisfies the requirements for a continued service-

900 connected disability. If the employee does not meet the  
 901 requirement for a continued service-connected disability, the  
 902 payment of disability benefits must stop. If the employee meets  
 903 the requirements for a continued service-connected disability,  
 904 the payment of disability benefits must continue, subject to this  
 905 plan.

906 (2) The Chief Administrative Officer may offer a 5-percent salary  
 907 increase to an employee who:

908 (A) is eligible to receive continued service-connected  
 909 disability benefits; and

910 (B) accepts an alternative position [within the] in County  
 911 government for which the employee is qualified.

912 (3) The employee's salary in the alternative position must not  
 913 exceed the maximum salary of the pay grade assigned to the  
 914 position.

915 (4) A member of the Office, Professional and Technical Bargaining  
 916 Unit or the Service, Labor and Trades Bargaining Unit who  
 917 accepts an alternative placement [incentive is not eligible to]  
 918 must not receive continued service connected disability benefits  
 919 based on the disability for which the alternative placement was  
 920 made.

921 (5) If a member applies for continued service-connected disability  
 922 benefits instead of accepting an alternative placement  
 923 [incentive], the member's [failure] decision not to accept the  
 924 [incentive] placement must not:

925 (A) be included in the information [considered by] given to  
 926 the [Disability] Medical Review Panel, Disability Review

- 927                    Board, [Chief Administrative Officer,] or Disability  
 928                    [Arbitration Board] Arbitrator;
- 929                    (B) be considered at any time by the [Disability] Medical  
 930                    Review Panel, Disability Review Board, [Chief  
 931                    Administrative Officer,] or Disability [Arbitration Board]  
 932                    Arbitrator; or
- 933                    (C) affect the member's eligibility for continued service-  
 934                    connected disability benefits or the amount of [the  
 935                    continued service-connected disability] those benefits.
- 936                    (f) *Role of the [Disability] Medical Review Panel and the Disability*  
 937                    *Review Board.*
- 938                    (1) The [Disability] Medical Review Panel must [consider an  
 939                    application for disability benefits] decide the medical issues  
 940                    necessary to determine if the applicant is eligible for disability  
 941                    benefits under subsection (a), (b), (c), (d), or (e). The Panel  
 942                    may consider any information or material submitted by the  
 943                    applicant, the certified representative, or the County. Within 60  
 944                    days after the application is filed, the Panel must meet [as a  
 945                    body] in person to [consider] review all evidence submitted to  
 946                    the Panel. An action by the Panel under this Section requires [2  
 947                    votes] a majority vote of 3 members. A dissenting member  
 948                    may issue a minority recommendation.
- 949                    (2) Before the Panel meets to review [the] an application, the Panel  
 950                    must advise each party of the deadline [date for submitting] to  
 951                    submit information to the Panel. The Panel must allow a  
 952                    reasonable amount of time for the parties to submit additional  
 953                    information, and may extend the deadline at the request of the

- 954 applicant for good cause [shown].
- 955 (3) The Panel must not accept or consider information from a  
 956 certified representative representing an applicant if the  
 957 information is received after the [established] deadline, [date]  
 958 unless the information is related to:
- 959 (A) [the applicant's] a reinjury to the applicant that occurred  
 960 or was diagnosed after the deadline [date]; or
- 961 (B) a change in the applicant's medical condition that  
 962 occurred or was diagnosed after the deadline [date].
- 963 (4) Within 30 days after the Panel's last meeting to consider the  
 964 application, the Panel must issue a written recommendation to  
 965 the [Administrator on whether the applicant qualifies for  
 966 disability benefits] Disability Review Board on the following  
 967 medical issues:
- 968 (A) Is the applicant mentally or physically incapable of  
 969 performing one or more essential duties of the applicant's  
 970 job as described in the current job description?
- 971 (B) Is the applicant's medical condition likely to be  
 972 permanent?
- 973 (C) Did the applicant sustain the injury, or undergo the  
 974 hazard, while performing his or her job duties? If not,  
 975 did the applicant sustain the incapacitating injury or  
 976 illness after becoming an employee?
- 977 (D) If the disability is based on a condition that was  
 978 aggravated, is the workplace aggravation the proximate  
 979 cause of the applicant's incapacity?
- 980 (E) Does the applicant have the residual functional capacity

- 981 to perform substantial gainful activity?
- 982 (5) [If] Before making its recommendation, the Panel [cannot
- 983 determine the applicant's eligibility for disability benefits based
- 984 on the evidence presented, the Panel may] must require the
- 985 applicant to complete a medical examination, including relevant
- 986 medical tests, by a medical doctor who is not a member of the
- 987 [Disability] Medical Review Panel, unless the Panel finds that a
- 988 medical examination is unnecessary. The County must pay the
- 989 cost of the examination. The Panel must issue its written
- 990 recommendation within 30 days after the medical doctor reports
- 991 to the Panel.
- 992 (6) Within [20] 45 days after [the Administrator receives] receiving
- 993 the Panel's recommendation, the [Administrator] Disability
- 994 Review Board must issue a final decision [on] whether the
- 995 applicant is eligible for disability benefits under this Section.
- 996 The Board may:
- 997 (A) consider any written evidence presented by the applicant
- 998 or the County;
- 999 (B) review the applicant's [[personal]] personnel file;
- 1000 (C) review the applicant's [[worker's]] workers
- 1001 compensation file;
- 1002 (D) review any accidental injury reports; and
- 1003 (E) remand the case to the Medical Review Panel for further
- 1004 consideration.

1005 **33-133. Termination of benefits.**

- 1006 (a) *Non-public safety employee.* The Administrator must terminate initial
- 1007 or continued disability benefits to a non-public safety employee if the

1008 employee:

- 1009 (1) recovers from the disability, as determined by the  
 1010 [administrator] Disability Retirement Board;
- 1011 (2) does not provide the Administrator with information that the  
 1012 Administrator requires; or
- 1013 (3) attains age 65, or a later age if required under Federal law.

1014 (b) *Public safety employee.* The Administrator must terminate initial or  
 1015 continued disability benefits to a public safety employee if the  
 1016 employee:

- 1017 (1) recovers from the disability, as determined by the  
 1018 [administrator] Disability Review Board;
- 1019 (2) does not provide the Administrator with information that the  
 1020 Administrator requires; or
- 1021 (3) attains age 65, or a later age if required under Federal law, if the  
 1022 benefit is for a non-service connected disability.

1023 **33-135. Medical examination.**

1024 (a) The Administrator ~~[[may]]~~ must require any employee receiving  
 1025 continued disability payments to undergo annual or less frequent  
 1026 medical examinations, unless the Administrator finds that a physical  
 1027 examination in a specific case is unnecessary. The Administrator  
 1028 must submit the findings of [the] any medical examination to the  
 1029 [Disability] Medical Review Panel.

1030 (b) The Panel must consider the findings of the physical examination and  
 1031 any other information submitted by the employee or the County and  
 1032 recommend in writing to the [Administrator] Disability Review Board  
 1033 whether the employee still qualifies for disability benefits.

1034 (c) The [Administrator] Board must issue a final decision within 20 days

1035 after receiving the Panel's recommendation. An employee may  
 1036 appeal the [Administrator's] Board's decision under Section 33-138.

1037 **33-138. Appeals of decisions.**

1038 (a) The applicant, or the certified representative on behalf of the  
 1039 applicant, may appeal [the] a written decision of the [Administrator]  
 1040 Disability Review Board on eligibility for disability benefits within 20  
 1041 days after the applicant receives the [Administrator's] Board's  
 1042 decision.

1043 (b) The Disability [Arbitration Board] Arbitrator must [convene to  
 1044 consider] consider an appeal within a reasonable time [after the appeal  
 1045 is filed]. The appeal and judicial review proceedings [are] must be  
 1046 governed by Sections 3-201 through 3-234 of the Maryland  
 1047 Arbitration Act, except that an Arbitrator's decision must not be  
 1048 vacated because an applicant who filed the appeal did not agree to  
 1049 arbitrate the appeal.

1050 (c) The Disability [Arbitration Board] Arbitrator [must issue the decision  
 1051 quickly. The Board] should issue the decision within 30 days after the  
 1052 hearing or receiving any post-hearing brief, whichever is later.

1053 (d) The County must pay all reasonable fees and expenses of the  
 1054 Arbitrator, as determined by the Chief Administrative Officer, except  
 1055 that a certified representative must pay any fee resulting from the  
 1056 cancellation of a scheduled hearing if the certified representative:

1057 (1) causes a hearing to be canceled and the application remanded to  
 1058 the [Disability] Medical Review Panel; or

1059 (2) causes a hearing to be canceled and rescheduled on a later date.

1060 **Sec. 2. Implementation.** Notwithstanding any other provision of law,  
 1061 including §33-80(a)(7), the implementation of any amendment to County Code

1062 Chapter 33 in Section 1 of this Act concerning disability retirement is not subject  
 1063 to collective bargaining with a certified representative of employees in any  
 1064 bargaining unit.

1065         **Sec. 3. Transition.** The Executive must appoint and the Council must  
 1066 confirm the members of the Medical Review Panel and the Disability Review  
 1067 Board within 90 days after this Act takes effect. The existing Disability Review  
 1068 Panel must review applications for a disability retirement filed during this  
 1069 transition period and make recommendations to the Chief Administrative Officer  
 1070 on the medical issues that the Medical Review Panel must decide under this law.  
 1071 The Chief Administrative Officer must review any recommendations of the  
 1072 Disability Review Panel made during this transition period and determine  
 1073 eligibility for a disability retirement until the members of the Disability Review  
 1074 Board are appointed and confirmed.

1075         **[[Sec. 4. Expedited Effective Date.** The Council declares that this Act is  
 1076 necessary for the immediate protection of the public interest. This Act takes effect  
 1077 on the date when it becomes law and applies to all applications for disability  
 1078 retirement filed on or after that date.]]

1079 *Approved:*

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1081

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Philip M. Andrews, President, County Council

Date

1082 *Approved:*

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Isiah Leggett, County Executive

Date

## Fairfax Municipal Code – Police Disability Retirement

### Section 3-7-26. Service retirement.

(a) *Normal Retirement.*

(1) Any member employed on active duty on or before June 30, 1981, who has attained twenty (20) years of creditable service or age fifty-five (55) shall be eligible for retirement on that date when written notification is provided to the Board by the member setting forth at that time when the retirement is to become effective.

(2) Any member employed on active duty or following July 1, 1981, who has attained twenty-five (25) years of creditable service or age fifty-five (55) shall be eligible for retirement on that date when written notification is provided to the Board by the member setting forth at that time when the retirement is to become effective.

(b) *Early Retirement.* Any member appointed subsequent to July 1, 1981, who has attained twenty (20) years of creditable service, shall be eligible for early retirement, when written notification is provided to the Board by the member setting forth at that time when the retirement is to become effective.

(c) *Ineligibility.* Any member who applies for pension and benefits pursuant to Section 3-7-28, or who applies pursuant to Section 3-7-29, and who receives the pension and benefits prescribed by Section 3-7-28 as a result thereof, on or after the effective date of Subsection 3-7-28(d), shall not be eligible for retirement under this Section while receiving pension and benefits for disability. (20-81-3; 14-87-3; 36-88-3.)

### Section 3-7-27. Service retirement allowance.

(a) *Normal retirement.* Any member who retires on or after July 1, 2000, pursuant to Section 3-7-26(a) shall receive an annual retirement allowance, payable monthly for life, consisting of two and eight-tenths percent (2 8/10%) of his or her average final compensation for each year of creditable service, as computed on the basis provided in Section 3-7-2; but in no event shall his or her total retirement allowance exceed eighty-four percent (84%) of his or her average final compensation. The annual retirement allowance of a member who retires or who has retired on or before June 30, 2000, or of a surviving spouse or surviving handicapped child of such a member receiving an allowance under an election made by the member under Section 3-7-39, shall be increased, effective July 1, 2000, by twelve (12%) percent.

(b) *Early retirement.* Upon retirement, with twenty (20) years of creditable service, members appointed subsequent to July 1, 1981, shall receive the annual retirement allowance computed on the basis provided in Subsection (a) of this Section reduced on actuarial equivalent basis for the period that the actual retirement date precedes the normal retirement date as projected on Table 1. (20-81-3; 6-00-3, § 1.)

TABLE 1

FAIRFAX COUNTY POLICE RETIREMENT PLAN

Actuarial Reduction Factors That Would Apply to Participants With a Normal Retirement Age Requirement of 25 years of Service (or, Attainment of Age 55, if Earlier) if They Are Permitted To Retire Early With a Reduced Pension After 20 Years of Service

TABLE INSET:

(ASSUMES 4% COST-OF-LIVING ADJUSTMENTS ARE EFFECTIVE AT RETIREMENT)						
Age at Retirement	Years of Service					
	20	21	22	23	24	25
38	74.50	79.17	84.06	89.18	94.48	100.00
39	74.18	78.89	83.83	89.01	94.39	100.00
40	73.84	78.61	83.60	88.84	94.30	100.00
41	73.49	78.32	83.37	88.67	94.21	100.00
42	73.11	78.01	83.13	88.50	94.12	100.00
43	72.72	77.68	82.88	88.33	94.03	100.00
44	72.32	77.34	82.61	88.14	93.93	100.00
45	71.89	76.98	82.34	87.95	93.83	100.00
46	71.44	76.61	82.04	87.75	93.73	100.00
47	70.97	76.22	81.74	87.53	93.62	100.00
48	70.48	75.81	81.41	87.31	93.50	100.00
49	69.96	75.38	81.08	87.07	93.38	100.00
50	69.42	74.92	80.72	86.83	93.25	100.00
51	74.45	74.45	80.35	86.57	93.11	100.00
52	79.95	79.95	79.95	86.29	92.97	100.00
53	86.00	86.00	86.00	86.00	92.82	100.00
54	92.66	92.66	92.66	92.66	92.66	100.00
55	100.00	100.00	100.00	100.00	100.00	100.00

(36-83-3; 28-89-3; 34-94-3.)

**Section 3-7-28. Service-connected disability.**

- (a) Any member who in the discharge of his official duties has become totally disabled as a result of an accident or personal injury on or before June 30, 1981, shall receive an annual retirement allowance, payable monthly, equaling sixty-six and two-thirds percent (66 2/3%) of the salary that would have been received had no injury occurred and the performance of duty had continued. Such pension and benefits shall continue during the existence of such total disability, or until such time as eligibility is reached for retirement pursuant to Section 3-7-26(a).
- (b) Any member who in the discharge of his official duties has become totally disabled as a result of an accident or personal injury on or subsequent to July 1, 1981, shall receive an annual retirement allowance, payable monthly, equaling sixty-six and two-thirds percent (66 2/3) of the salary the member received on the date of accident or personal injury subject to the provisions of Section 3-7-37. Such allowance shall continue during the existence of such total disability, or until such time as eligibility is reached for retirement pursuant to Section 3-7-26(b)(2).
- (c) The amount of compensation awarded under the Virginia Workers' Compensation Act ("the Act") to such members for temporary total or partial incapacity, including any awards of cost-of-living increases under the Act, shall be deducted from such retirement allowance. Whenever the member is no longer entitled to receive payments for temporary total or partial incapacity under the Act because of the limits in the Act as to the total amount of such compensation or as to the period of time that the member is entitled to receive such compensation, such payments shall no longer be used to reduce the monthly retirement allowance and, accordingly, subsequent monthly payments of the allowance shall be determined as if the original allowance had been computed without reduction for such payments.
- (d) Any member who applies for a service-connected disability retirement and an allowance pursuant to Subsection (a) or (b) of this Section, or who applies pursuant to Section 3-7-29, and who receives the allowance prescribed by this Section as a result thereof, on or after the effective date of this Subsection [July 1, 1988], shall receive the allowance so provided during the existence of such disability, until the total membership service credit period equals twenty-five (25) years, whereafter said allowance shall be reduced to sixty percent (60%) of the salary that would have been received had no injury occurred and the performance of duty continued.
- (e) With respect to all retirements after the effective date of this Subsection [January 11, 1993] pursuant to this Section or as a result of an application pursuant to Section 3-7-29 as a result of which the member receives the allowance provided by this Section, if a member receives some or all of his compensation for temporary total or partial incapacity under the Act in the form of a lump sum payment, he shall receive no monthly retirement allowance otherwise payable under this Section until such time as the amounts he would have received equal the amount of his lump sum benefit under the Act; provided, however, neither a lump sum payment or any portion thereof representing compensation for permanent total or partial loss or disfigurement under the Act nor a lump sum payment or a portion thereof representing compensation for periods of temporary total or partial incapacity which occurred prior to the effective date of the member's

retirement under this Section shall be offset against the member's allowance under this Section; and provided further that in the event that the member receives a lump sum settlement of benefits that he is or may be entitled to in the future under the Act, and said settlement does not specify how much of the sum represents settlement of his entitlement to temporary total or partial incapacity, as opposed to other benefits, the Board shall determine the portion of such sum which in its judgment represents compensation for such benefits. (20-81-3; 8-82-3; 4-83-3; 36-88-3; 13-92-3; 1-93-3.)

**Section 3-7-29. Partial service-connected disability.**

- (a) For purposes of this Article, "total disability" shall be defined as the inability of the member to reasonably perform his or her duties as a police officer. "Partial disability" shall be defined as the inability of the member to perform some part of the duties of a police officer, such as in administrative or desk assignments.
- (b) Members granted pension and benefits for partial disability shall be subject to recall to active service by the Board when police officer positions are available in the Police Department that they are capable of performing, as determined by the Chief of Police. If so recalled, all pension and benefits for partial disability shall terminate from and after the date of such recall.
- (c) Any member becoming partially disabled in the manner provided in this Section, who shall remain in the Police Department in a police officer position which he or she is capable of performing, shall not receive pension and benefits until such service credit is acquired as would otherwise be required for service retirement.
- (d) If the Chief of Police determines that there is no suitable police officer position available for a partially disabled member, such member shall then be treated as totally disabled under the provisions of this Article from and after the date of his or her separation from employment with the Police Department.
- (e) The surviving spouses and dependants of all members who have been retired before and of those who are retired on or after July 7, 2003, on account of service-connected partial disability shall be entitled to benefits under Section 3-7-41. (20-81-3; 33-03-3).

**Section 3-7-30. Processing disabilities.**

- (a) Upon receiving a member's or the employer's written request for disability benefits, the Board shall require such member to submit, from a physician of the member's choice, a written report of findings and recommendations. The Board shall then select a physician of its choice and require the member to submit to a medical examination. In the event there is not clear preponderance of medical evidence from the above two (2) physicians, a third physician will be selected by the original two (2) physicians, who will also examine the member and submit a written report of findings and recommendations.

(b) A waiver of examinations, as required by this Section, may be made by either the Board or member for justifiable causes; but in no event shall any member be granted disability benefits without submitting to at least one (1) medical examination.

(c) Failure of any member to submit to medical examination as required by this Section may result in the denial, loss or reduction of the member's disability benefits.

(d) Any member submitting a written request for disability benefits on or after the effective date [of Ord. No. 24-85-3] shall, prior to or simultaneously with submitting such request, apply for all Workers' Compensation benefits to which he may be entitled. The member shall also be required to submit to the Board copies of the dispositions as made of his Workers' Compensation claims and any subsequent awards or other documents reflecting any modification or termination of such benefits. With respect to the determination of a member's eligibility for disability benefits, the Board shall give great weight to the decisions of the Industrial Commission, the Court of Appeals, and the Supreme Court of Virginia on the compensability of his disability under the Worker's Compensation Act, and the Board may modify its prior determination of his eligibility under this Section in light of any such decision within ninety (90) days after the date such decision becomes final. (20-81-3; 24-85-3; 13-92-3.)

**Section 3-7-31. Non-service-connected disability.**

(a) Any member who becomes totally disabled, but not as a result of activities in the performance of official duties, may receive a non-service-connected disability benefit equal to the same benefit pursuant to Section 3-7-27, provided the service credit requirements exist thereof.

(b) Members who do not have the service credit required in Section 3-7-26 shall receive a disability benefit in an amount equivalent to the greater of (1) ten percent (10%) of his average final compensation, or (2) of an amount determined under Section 3-7-27(a).

(c) Members granted benefits under this Section shall not receive service credit while on non-service-connected disability, nor shall their surviving spouses or dependents be eligible for benefits under this Article. (20-81-3.)

**Section 3-7-32. Rehabilitation of disabled members.**

(a) The Board may determine, upon receiving supporting medical data from any two physicians, as referred to in Section 3-7-30, that a disabled member has sufficiently recovered to perform a part or all the duties of a police officer, or to engage in other gainful employment in which he might reasonably be expected to be engaged, in light of education, training, or experience. To the extent that such member has sufficiently recovered but is unable to be certified to full-time active duty as a police officer, the Board may determine the degree of partial disability then still existing and reduce the disability benefits accordingly. The determination of partial disability shall be based upon the medical record and the ability of the

member to seek gainful employment in light of education, training, experience, retraining, and rehabilitation.

(b) The Board is authorized to enter into contracts or agreements for the rehabilitation of disabled members and to pay reasonable costs thereof. (20-81-3; 33-03-3).

**Section 3-7-33. Medical reevaluation of disabled members; penalty for unjustified refusal of medical attention, vocational rehabilitation and/or selective employment under the Virginia Workers' Compensation Act, or to submit to medical reevaluation.**

(a) *Medical reevaluations.*

(1) Once each year during the first five (5) years following disability, and once every three-year period thereafter, the Board shall require such members to undergo medical examinations by the same physicians as specified in Section 3-7-30, if available. Should any such physician be unavailable, a successor shall be designated, as previously determined in Section 3-7-30.

(2) Each physician shall independently examine such member and submit a written report of findings and recommendations to the Board. In the event that such member fails to submit to these medical examinations, benefits shall be discontinued until the member submits to the examinations; and should the refusal continue for one (1) year, all rights to disability benefits under this Article shall terminate.

(3) In lieu of the examinations specified in Subsections (a)(1) and (a)(2) of this Section, the Board, in its discretion, may accept the reports of physicians who are treating or examining the member for purposes of the Virginia Workers' Compensation Act.

(b) Members who are receiving service-connected disability retirement allowances pursuant to Section 3-7-28, and who are receiving periodic payments pursuant to Virginia Workers' Compensation Act which payments are required to be offset against such allowances pursuant to Section 3-7-28 shall cooperate with and accept medical services, vocational rehabilitation, and/or selective employment provided pursuant to the Virginia Workers' Compensation Act. In the event that such a member's periodic payments are suspended by the Virginia Workers' Compensation Commission then the allowance pursuant to Section 3-7-28 shall be computed as if the member had received the suspended payments unless the Board, in its discretion determines not to accept the decision of the Commission. Should such member's refusal to accept medical services, vocational rehabilitation and/or selective employment continue for 365 days whether or not consecutive, all his rights to any future disability allowance shall cease. The Board shall make appropriate adjustments to the member's allowance if the suspension by the Workers' Compensation Commission is subsequently reversed or modified. Employers shall promptly notify the Board of any suspensions or releases from suspensions affecting members subject to this Subsection. For purposes of this Section, an order of the Workers' Compensation Commission suspending compensation for refusal creates a rebuttable presumption that the

member unjustifiably refused medical services, vocational rehabilitation, and/or selective employment. (20-81-3; 41-93-3; 29-97-3.)

**Section 3-7-34. Reduction of disability allowance.**

(a) Whenever the Board concludes that any member receiving a service-connected disability retirement allowance pursuant to Section 3-7-28 or 3-7-29 is, prior to his normal retirement date, engaged in a gainful occupation or work paying more than the difference between his service-connected disability allowance and his average salary, the Board shall reduce such retirement allowance to an amount which, together with the amount earned by the member, equals the amount of his average salary.

(b) Members receiving an allowance pursuant to Section 3-7-28 or 3-7-29 shall submit by May 30th of each year a copy of that portion of their federal income tax returns showing the amount of their earned income and copies of W-2 forms (wage statements) provided by their employers to the Board for the previous calendar year. Failure to submit such documentation on request shall result in the loss of the allowance until the documentation is provided; and should a member's refusal continue for one (1) year, all his rights to any further disability retirement shall cease.

(c) The Board shall adopt written regulations governing the administration of this Section, providing for, among other things, the notification to the members deemed appropriate, and allowing for late submission of required documentation for good cause shown. (20-81-3; 36-88-3.)

**Section 3-7-35. Presumption; hypertension or heart disease.**

Any condition or impairment of health of any such member caused by hypertension or heart disease resulting in total disability shall be presumed to have been suffered in the discharge of his official duties unless the contrary be shown by competent evidence; provided that prior to making any claim based upon such presumption for pension and benefits under the provisions of this Section on account of such total or partial disability, such member shall have been found free from cardiovascular disease by a physical examination which shall include such appropriate laboratory and other diagnostic studies as the Board may prescribe, and which shall have been conducted by physicians whose qualifications shall have been prescribed by the Board; and provided further than any such member claiming that his disability was suffered in the discharge of his official duties shall, if requested by the Board, submit to physical examination by any physician designated by the Board, which examination may include such tests or studies as may reasonably be prescribed by the physician so designated. Such member shall have the right to have present at such examination, at his own expense, any qualified physician he may be designate. (20-81-3.)

**Section 3-7-36. Disability as a result of negligence.**

Should an accident or personal injury causing total disability be the result of the member's own gross and willful negligence, wanton neglect of duties and responsibilities, drunkenness, or illicit use of narcotics, such disability shall be deemed to be non-service-connected disability and the benefits shall be fixed pursuant to provisions of Section 3-7-31. (20-81-3.)

**Section 3-7-37. Cost-of-living adjustment.**

Monthly retirement allowances shall be adjusted effective July 1, 1981, and each July 1 thereafter in order to reflect changes in the cost of living since the date of benefit commencement; provided, however, that allowances for service-connected disability retirement shall be subject to the provisions of Subsection (d). The monthly allowance to be effective July 1 of any such year shall be the allowance in effect immediately prior to such adjustment increased for the basic cost-of-living increase provided for in Subsection (a) of this Section, with such increase reduced as provided in Subsection (c) of this Section in the event the monthly retirement allowance has been in pay status for less than twelve (12) months.

(a) The basic cost-of-living increase shall be the lesser of four percent (4%) and the percentage corresponding to the percentage increase in the Consumer Price Index during the twelve-month calendar period ending with the March immediately preceding the July in which the increase is effective. For the purpose of this Section, "Consumer Price Index" shall mean the Washington, DC-MD-VA Index of the Consumer Price Index for all Urban Consumers (CPI-U) as issued by the Bureau of Labor Statistics of the U.S. Department of Labor.

(b) As part of each biennial actuarial valuation, the actuary shall determine the percentage Supplemental cost-of-living increase (not greater than one percent (1%) that can be provided on the following two (2) July first's based upon the available actuarial surplus. The Trustees may, but shall not be required to, increase all retirement allowances in pay status on each of such July first's by such actuarially determined percentage. For the purpose of this Section, "available actuarial surplus" shall mean one-half ( 1/2) of the excess of (i) the sum of the market value of assets, the present value of future County contributions and the present value of future participant contributions over (ii) the present value of future benefits for current participants and beneficiaries. In making this determination, the actuary will assume a County contribution rate of 20.446% of covered payroll; provided, however, that in the event there is a change in actuarial assumptions, benefit design and/or funding methods, such percentage assumed County contribution rate shall be increased (or decreased) by the same amount the required County contribution rate changes as the direct result of such change in actuarial assumptions, benefits and/or funding methods.

(c) In the event a retired member has not been receiving his allowance for twelve (12) full months, the basic cost-of-living increase and the supplemental cost-of-living increase shall be determined as the percentage of the full increase determined in (a) and (b) above as follows:

<i>Number of Complete Months Benefit Has Been in Pay Status</i>	<i>Percentage of Full Increase</i>
Less than 3 . . .	0%
3, 4 or 5 . . .	25%
6, 7 or 8 . . .	50%
9, 10 and 11 . . .	75%

(d) Cost-of-living adjustments provided by this Section shall be applied to the net amount of the member's service-connected disability retirement allowance after all reductions required by Section 3-7-28 have been made. The member's allowance after the adjustments for cost of living provided by this Section at any date in time shall be determined by retroactive computation from the date of initial retirement, and the application of all applicable cost-of-living adjustments to the net allowance which the member is entitled to under Section 3-7-28. (20-81-3; 1-93-3.)

**Section 3-7-38. Refund of contributions upon withdrawal or death; and deferred vesting benefits.**

(a) In the event of the death of any member, active or retired, the difference between the total contributions made hereunder by such member, including picked up amounts, and any benefit payments received by him, his surviving spouse or dependents, shall be payable to his estate or designated beneficiary, provided, however, that such payment shall be made only after the cessation of benefits under Section 3-7-41 or Section 3-7-43. Any member who shall have been separated from the services and whose employment shall have been terminated otherwise than by death or retirement shall, on application made within two (2) years from the date of such separation, be refunded all of his accumulated contributions, including picked up amounts; provided, however, that if such member has received payments or benefits under this System, the amount of such payments or benefits shall be deducted from the amount to be refunded; provided further that should any retired member be receiving benefits hereunder at the time of his death then, and in that event, his dependents, or beneficiaries if any, who are not eligible to receive benefits under this Article shall receive the difference between the total contributions made hereunder by such member, including picked up amounts, and any payments received, and at the same rate which such retired member was receiving benefits.

(b) If a member has five (5) or more years of creditable service on his date of separation from the County, the member may leave his accumulated contributions, including picked up amounts, in the fund and receive a deferred annuity payable beginning the date the member attains age fifty-five (55), or in an actuarially reduced amount payable at the optional early retirement age, in accordance with applicable provisions of this Article. (20-81-3; 5-85-3; 28-89-3; 10-01-3.)

## Howard County Disability – Police & Fire

### Sec. 1.431A. Disability benefits.

The Plan shall pay disability benefits determined in accordance with the following provisions:

(a) *Ordinary Disability.* If a Participant reaches a Termination Date by reason of total and permanent disability, the Participant shall be entitled to receive a monthly disability benefit equal to the greater of the amount determined in accordance with paragraph (1) or paragraph (2), as follows:

(1) If the Participant has completed at least 5 years of creditable service, the monthly benefit payable pursuant to this paragraph (1) shall be 20% of the Participant's Average Compensation.

(2) If the Participant has completed at least 5 years of creditable service, the monthly benefit payable pursuant to this paragraph (2) shall be the Participant's Accrued Benefit (based upon the Participant's actual years of creditable service and Average Compensation at his or her termination of employment), without Actuarial Reduction and, notwithstanding the provisions of subsection (c) of this section, without reduction for any benefits payable under the Workers' Compensation Law of Maryland.

(b) *Line of Duty Disability.*

(1) Except as provided in paragraphs (2) and (3) of this subsection, a Participant (regardless of his or her length of service) who terminates employment by reason of total and permanent disability, incurred as a result of an accident or injury which has been sustained as an active Covered Employee and which has been ruled compensable under the Workers' Compensation Law of Maryland, shall be entitled to receive a monthly benefit equal to the greater of:

(i) The benefit determined pursuant to (a) above; or

(ii) The lesser of:

a. A monthly amount which, when combined with any Social Security disability benefits the Participant is entitled to receive, equals 100% of his or her Compensation determined, as of the onset of the Participant's disability; or

b. 66 2/3% of the Participant's Compensation.

(2) Except as provided in paragraph (3) of this subsection, a Participant, regardless of his or her length of service, who is a Firefighter who terminates employment after December 31, 1997 or a Police Officer who terminates employment after March 31, 1998 by reason of a line of duty disability shall be entitled to receive:

(i) If the line of duty disability is a catastrophic disability, as defined in subparagraph (iv) below, a monthly benefit equal to 66 2/3% of the Participant's Compensation; or

(ii) If the line of duty disability is a non-catastrophic disability, as defined in subparagraph (v) of this paragraph, a monthly benefit equal to 50% of the Participant's Compensation.

(3) A Participant who is receiving a monthly benefit pursuant to paragraph (1) of this subsection may make a one-time irrevocable election to cease his or her receipt of benefits under paragraph (1) of this subsection in exchange for benefits under paragraph (2)(ii) of this

subsection. Such election shall be made between the effective date of this amendment and November 30, 2000 and shall take effect on January 1, 2001.

(4) In paragraphs (2) and (3) of this subsection the following terms have the meanings indicated.

(i) "Line of duty disability" means a total and permanent disability which, as determined in accordance with rules established by the committee, is incurred as a result of an accident or injury which has been sustained as a result of service as an active Covered Employee and which has been ruled compensable under the Workers' Compensation Law of Maryland.

(ii) "Catastrophic disability" means a line of duty disability:

a. By reason of which the Participant will be permanently prevented from engaging in any substantial gainful employment; or

b. Which severely limits one or more major life activities. Substantial gainful employment means the ability to perform a moderate amount of work with reasonable regularity, without reference to the type of work performed by the Participant before his or her Termination Date. Major life activities include caring for one's self, walking, seeing, hearing, speaking, breathing or learning.

(iii) "Non-catastrophic disability" means a line of duty disability which is not a catastrophic disability.

(c) *Payments Considered in the Nature of Workers' Compensation Payments.* Any payments made to police and fire employees for injuries received in the line of duty pursuant to any retirement disability provisions of this Plan shall be considered to be in the nature of Worker's Compensation payments made pursuant to Title 9 of the Labor and Employment Article of the Annotated Code of Maryland.

(d) *Adjustments to Compensation.* For purposes of (b) above, "Compensation" includes adjustments to the legislated base annual salary for Employees in the same position classification as the Participant at the time of the onset of the Participant's disability through the date the Participant's disability benefits commence. In addition, such Participant shall be entitled to receive individual health insurance coverage under the health plan in effect for Covered Employees as of the Participant's Termination Date (or if the Plan is no longer offered by the County, coverage under the most comparable health plan offered by the County). The premiums for such health insurance coverage will be paid by the county.

(e) *General Provisions Relating to Disability.*

(1) *Commencement of disability benefits.* Disability benefits shall commence on the 1st day of the month coincident with or otherwise next following the determination of disability by the County; provided, however, that benefits payable pursuant to this Section shall be reduced by any benefits payable from workers' compensation.

(2) *Forms of benefit.* The benefits payable pursuant to this Section shall be payable in the normal form provided by Section 1.428A, unless an optional form of payment has been elected pursuant to Section 1.442A.

(3) *Definition.*

(i) Total and permanent disability shall mean a medically determinable physical or mental impairment which can be expected to be permanent or result in death, and by reason of which the Participant will be prevented from performing the usual duties of his or her position with the County as required by the County Code.

(ii) Such total and permanent disability must be evidenced by a certificate of a physician selected or approved by the County.

(iii) However, total and permanent disability shall not include any injury or disease which:

a. Resulted from or consists of chronic alcoholism or addiction to narcotics;

b. Was contracted, suffered or incurred while the Participant was engaged in, or resulted from his or her having engaged in, a criminal enterprise;

c. Was intentionally self-inflicted; or

d. Arose as a result of willful negligence on the part of the Participant.

(4) *Continuing disability.*

(i) Until a Participant who has reached a Termination Date by reason of disability attains his or her Normal Retirement Date, the continuation of the Participant's right to receive disability benefits shall depend on the participant's continued survival, and the case shall be subject to periodic review in accordance with rules established by the County to determine the Participant's employment status, including the requirement that the Participant furnish to the County a copy of his or her federal income tax return each year.

(ii) In the event a disabled Participant ceases to submit to such review, prior to his or her Normal Retirement Date, the disability benefits payable pursuant to this Section shall cease.

(iii) Except as provided in subparagraph (iv) of this paragraph, if, during a calendar year, the amount of a Participant's earned income, worker's compensation benefits, and disability benefits paid to the Participant pursuant to this Section for such year exceed the Participant's annualized Average Compensation at his or her Termination Date plus \$3,000 (adjusted for C/L Increases), effective as of the 1st day of the next following Plan Year, the disability benefit payable under the Plan shall be reduced, dollar for dollar, to the extent of the excess.

(iv) Subparagraph (iii) of this paragraph does not apply to Participants who retire pursuant to the provisions of subsection (b)(2) of this Section.

(5) *Death of disabled Participant.* In the event of the death of a disabled Participant, no benefits with respect to the Participant shall be payable except as otherwise provided in Sections 1.439A and 1.440A.

(6) *Termination of employment after Normal Retirement Date.* Notwithstanding any of the foregoing provisions, if a Participant terminates employment with the County on a date at which he or she would be entitled to benefits pursuant to Section 1.428A, the Participant shall be deemed to have elected retirement and shall receive the benefits provided under Section 1.428A, as the case may be; provided, however, that if the Participant qualifies for benefits payable pursuant to this Section 1.431A the Participant may elect to receive disability benefits under this Section 1.431A in lieu of benefits under Section 1.428A.

(C.B. 83, 1995; C.B. 60, 1997; C.B. 79, 1997; C.B. 21, 2000; C.B. 10, 2001; C.B. 7, 2004, § 2; C.B. 22, 2008, § 1)

## Baltimore County Disability Retirement

### § 5-1-221. ORDINARY DISABILITY RETIREMENT BENEFIT.

Upon the application of a member in service or of the employer, any member who has had five (5) or more years of creditable service, or ten (10) or more years of creditable service if the member begins service on or after July 1, 2007, may be retired by the Board of Trustees not less than thirty (30) and not more than ninety (90) days next following the date of filing such application for an ordinary disability retirement allowance; provided that the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired.

(1988 Code, § 23-53) (Bill No. 32-03, § 1, 7-1-2004; Bill No. 42-07, § 2, 6-6-2007)

### § 5-1-222. ALLOWANCE ON ORDINARY DISABILITY RETIREMENT.

(a) This subsection applies to a member who began service before July 1, 2007. Upon retirement for ordinary disability, a member shall receive an ordinary disability retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of the member's accumulated contributions at the time of retirement; and

(2) A pension which, together with the member's annuity, shall provide a total allowance equal to one fifty-fifth ( $1/55$ ) of the member's average final compensation in the case of a Group 3 member who either was a member on December 31, 1960, and elected to make such increased contributions or became a member on or after January 1, 1961, provided that the member joined the system not more than two years after the member's date of employment as provided in § 5-1-203 of this subtitle, except that a Group 3 member whose allowance for service retirement is calculated under § 5-1-214(a)(2) of this subtitle shall have the member's allowance under this section calculated in accordance with § 5-1-214(a)(2) of this subtitle, and one-fortieth ( $1/40$ ) of the member's average final compensation in the case of a Group 3 member who at retirement is an appointed department head and retires on or after July 1, 1971, multiplied by the number of years of the member's creditable service; and in the case of a Group 4 member, equal to one-fortieth ( $1/40$ ) of the member's average final compensation multiplied by the number of years of the member's creditable service not in excess of twenty (20) and one-fiftieth ( $1/50$ ) of the member's average final compensation multiplied by the number of years of the member's creditable service in excess of twenty (20). The minimum retirement allowance shall be equal to one-quarter ( $1/4$ ) of the member's average final compensation, increased by one fifty-fifth ( $1/55$ ) of the member's average final compensation in the case of a Group 3 member, for each year of creditable service in excess of five (5) years to a maximum of one-third of the member's average final compensation. In the case of a Group 4 member retiring on or after July 1, 1979, the

minimum retirement allowance shall be equal to one-half (1/2) of the member's average final compensation. No ordinary disability retirement allowance payable to any member shall exceed the allowance which would otherwise be payable to the member were the member's service to continue until the attainment of the member's normal service retirement age.

(b) In the case of a Group 4 member, the minimum retirement allowance shall be equal to one-half (1/2) of the member's average final compensation.

(c) (1) This subsection applies to a member who begins service on or after July 1, 2007.

(2) Upon retirement for ordinary disability, a member shall receive an ordinary disability retirement allowance which shall consist of:

(i) An annuity which shall be the actuarial equivalent of the member's accumulated contributions at the time of retirement; and

(ii) A pension which, together with the member's annuity, shall provide a total allowance equal to one-seventieth (1/70) of the member's average final compensation in the case of a Group 3 member, and one-fortieth (1/40) of the member's average final compensation in the case of a Group 3 member who at retirement is an appointed department head multiplied by the number of years of the member's creditable service; and in the case of a Group 4 member, equal to one-fortieth (1/40) of the member's average final compensation multiplied by the number of years of the member's creditable service not in excess of twenty (20) and one-fiftieth (1/50) of the member's average final compensation multiplied by the number of years of the member's creditable service in excess of twenty (20).

(3) The minimum retirement allowance shall be equal to one-quarter (1/4) of the member's average final compensation, increased by one-seventieth (1/70) of the member's average final compensation in the case of a Group 3 member, for each year of creditable service in excess of ten (10) years to a maximum of one-third (1/3) of the member's average final compensation.

(d) No ordinary disability retirement allowance payable to any member shall exceed the allowance which would otherwise be payable to the member were the member's service to continue until the attainment of the member's normal service retirement age.

(1988 Code, § 23-54) (Bill No. 131-93, 1993, § 2; Bill No. 32-03, § 1, 7-1-2004; Bill No. 42-07, § 2, 6-6-2007; Bill No. 47-07, § 2, 7-1-2007; Bill No. 48-07, § 2, 7-1-2007)

***Editor's note:***

*Section 2 of Bill No. 42-07 added subsections (b) and (c) to this section. Thereafter, section 2 of Bill No. 48-07 added a subsection (b) to this section. As a result, subsections (b) and (c), as added by Bill No. 42-07, have been renumbered as subsections (c) and (d).*

**§ 5-1-223. ACCIDENTAL DISABILITY BENEFIT.**

Upon the application of a member in service or of the employer, any member who has been totally and permanently incapacitated for duty as the natural and proximate result of an accident

occurring while in the actual performance of duty at some definite time and place, without willful negligence on the member's part, shall be retired by the Board of Trustees; provided that the Medical Board shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired. No beneficiary entitled to an accidental disability retirement allowance shall receive any allowance on account of ordinary disability.

(1988 Code, § 23-55) (Bill No. 32-03, § 1, 7-1-2004)

**§ 5-1-224. ACCIDENTAL DISABILITY PRESUMPTION.**

(a) Commencing as of July 1, 1980, and subject to the provisions of subsections (b) and (c) of this section, any condition or impairment of health of any sworn personnel in the Police or Fire Departments, who is a member of the Employees' Retirement System of the county caused by lung diseases, heart diseases or hypertension resulting in permanent physical disability, which shall prevent the member from engaging in the scope of employment consistent with the member's normal previous duties, shall be presumed to have been suffered in the course of and arising from the member's employment; and such member shall be subject to retirement under the provisions of this Code relating to accidental disability retirement.

(b) Sworn personnel in the Police Department shall have successfully passed a physical examination upon entering into service as a police officer which failed to reveal any evidence of any such condition or impairment of health as described herein.

(c) In the case of sworn personnel in the Fire Department as of July 1, 1980, who successfully pass a physical examination between July 1 and August 16, 1980, which fails to reveal any evidence of such condition or impairment of health or those sworn personnel entering the Fire Department after July 1, 1980, and successfully passing a physical examination which fails to reveal any evidence of such condition or impairment of health, the presumption established may be rebutted only by clear and convincing evidence to the contrary.

(1988 Code, § 23-56) (Bill No. 32-03, § 1, 7-1-2004)

**§ 5-1-225. ALLOWANCE ON ACCIDENTAL DISABILITY RETIREMENT.**

Upon retirement for accidental disability, a member shall receive an accidental disability retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of the member's accumulated contributions at the time of the member's retirement; and

(2) A pension of sixty-six and two-thirds (66.66) percent of the member's average final compensation.

(1988 Code, § 23-57) (Bill No. 131-93, 1993, § 2; Bill No. 32-03, § 1, 7-1-2004)

**§ 5-1-226. SAME--POLICE AND FIRE DEPARTMENTS.**

Upon retirement for accidental disability, a sworn member of the Fire Department on pay schedule V and VIII, and for all accidental disability applications made on or after July 1, 1995 by a sworn member of the Police Department on pay schedule IV and VII, such member shall receive an accidental disability retirement allowance which shall be as follows:

(1) (i) *Dismemberment or paralysis.* Member shall be eligible to receive an accidental disability allowance, regardless of age, if the member has sustained any of the losses listed in the schedule below and which loss has been determined to be the direct result of bodily injury arising through an accident, independent of all other causes, occurring while in the actual performance of duty with the county at a definite time and place, without willful negligence on the part of the member. The accidental disability allowance under this section shall be an amount equal to seventy-five (75) percent of the member's average final compensation.

(ii) Schedule of losses:

1. Both hands or both feet;
2. One hand and one foot;
3. One hand and the sight of one eye;
4. One foot and sight of one eye;
5. Sight of both eyes;
6. Paralysis (para or quadriplegia);

with respect to a hand or foot, "loss" means dismemberment by severance through or above the wrist or ankle joint. "Loss" also means partial dismemberment of a hand or foot that results in the loss of all functional use of the partially dismembered hand or foot. With respect to eyes, "loss of sight of one eye" shall mean central visual acuity of twenty two-hundredths (20/200) or less in one eye with the use of correcting lenses, or visual acuity of greater than twenty two-hundredths (20/200) if accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees. "Loss of sight of both eyes" shall mean central acuity of twenty two-hundredths (20/200) or less in the better eye with the use of correcting lenses, or visual acuity greater than twenty two-hundredths (20/200) if accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees.

(2) (i) *Accidental disability – schedule of impairments.* A member shall be eligible to receive a full accidental disability allowance, regardless of age, if the member has sustained an impairment or impairments to the extent listed below under "schedule of impairments" as a direct result of the actual performance of duties with the county and which has permanently incapacitated the member for the further performance of the duties of the member's job classification. The full accidental disability allowance under this paragraph shall be an amount equal to sixty-six and two-thirds (66 2/3) percent of the member's average final compensation.

(ii) *Schedule of impairments:* A seventy-five (75) percent anatomical loss of the use of the impairments listed below or a fifty (50) percent or more anatomical loss of each of two (2) or more of the impairments below; or a one hundred (100) percent or more anatomical loss of the use of any combination of the impairments listed below, if the loss is caused by the same accident or incident, and, as a result of the loss, the member's employment is involuntarily terminated:

1. Speech;
2. Sight;
3. Neck;
4. Back;
5. Vital bodily organ;
6. A part of the central nervous system;
7. Arm;
8. Hip, leg, or lower extremity;
9. Shoulder;
10. Hearing;
11. Mentally incapacitated whereby a member applies for and is granted a disability benefit under the federal old-age survivor's and disability insurance act.

(iii) The percentage of anatomical loss shall be determined in accordance with the American Medical Association guides to evaluation of permanent impairment, such determination shall include information about function and range of motion.

(3) *Accidental disability.* A member shall be eligible to receive an accidental disability allowance, regardless of age, if the member has sustained an impairment as a direct result of the actual performance of duties with the county and which has permanently incapacitated the member for the further performance of the duties of the member's job classification but does not reach the extent of incapacity as found in paragraphs (1) and (2) of this section. For pay schedules V and VIII the accidental disability allowance under this section shall be an amount equal to one-fortieth (1/40) of the member's average final compensation multiplied by the number of years of creditable service not in excess of twenty (20) and one fifty-fifth (1/55) of the member's average final compensation multiplied by the number of years of creditable service in excess of twenty (20). The minimum retirement allowance shall be equal to fifty (50) percent of the member's average final compensation. For pay schedules IV and VII the accidental disability allowance under this section shall be an amount equal to one-fortieth (1/40) of the member's average final compensation multiplied by the number of years of creditable service not in excess of twenty (20) and one-fiftieth (1/50) of the member's average final compensation multiplied by the number of years of creditable service in excess of twenty (20). The minimum retirement allowance shall be equal to fifty (50) percent of the member's average final compensation.

(1988 Code, § 23-57.1) (Bill No. 84-94, § 2, 7-1-1994; Bill No. 91-95, § 1, 7-1-1995; Bill No. 82-01, § 1, 10-5-2001; Bill No. 32-03, § 1, 7-1-2004)

**§ 5-1-227. REEXAMINATION OF BENEFICIARIES RETIRED ON ACCOUNT OF DISABILITY.**

(a) Once each year during the first five (5) years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board of Trustees may and upon the disability beneficiary's application shall require any disability beneficiary who has not yet attained the normal service retirement age to undergo a medical examination, such examination to be made at the place of residence of such beneficiary or other place mutually agreed upon, by a physician or physicians designated by the Board of Trustees. Once each year following the retirement of a member of a disability retirement allowance, the Board of Trustees shall require that each disability beneficiary file a statement of earnings on a form to be supplied by the Board of Trustees. Should any disability beneficiary who has not yet attained the normal service retirement age refuse to submit to such medical examination or refuse to file a statement of earnings form with the Board of Trustees, the disability beneficiary's allowance may be discontinued until the disability beneficiary's withdrawal of such refusal; and should the disability beneficiary's refusal continue for one (1) year, all the disability beneficiary's rights in and to the disability beneficiary's pension may be revoked by the Board of Trustees.

(b) Should the Medical Board report and certify to the Board of Trustees that any disability beneficiary is able to perform the duties required by the position the disability beneficiary held prior to the disability beneficiary's retirement and should the Board of Trustees concur in such report or should the statement of earnings reveal that any disability beneficiary is engaged in gainful occupation paying more than the rate of the annual earnable compensation currently being paid to persons in the same grade and step as the beneficiary attained at the time of retirement plus the amount of any longevity for the length of service the disability beneficiary had at the time of retirement, the pension otherwise payable to the disability beneficiary shall be reduced as follows: For earnings in excess of such rate of annual earnable compensation plus longevity amount, a reduction of two dollars (\$2.00) in pension benefits shall be made for each five dollars (\$5.00) earned. Should the disability beneficiary's earning capacity be later changed, the amount of the disability beneficiary's pension may be further modified; provided that the new pension shall not exceed the amount of the pension which would have been payable to the disability beneficiary had it not been reduced on account of excess earnings. A beneficiary restored to active service at a salary less than the rate of annual earnable compensation currently being paid to persons in the same grade and step as the beneficiary attained at the time of retirement plus the amount of any longevity for the length of service the disability beneficiary had at the time of retirement shall not become a member of the retirement system until the

disability beneficiary's salary is at least equal to such rate of annual earnable compensation plus longevity amount.

(c) Should a disability beneficiary under the normal service retirement age be restored to active service and should the disability beneficiary's annual compensation then or at any time prior to the normal service retirement age be equal to or greater than the rate of annual earnable compensation currently being paid to persons in the same grade and step as the disability beneficiary attained at the time of retirement plus the amount of any longevity for the length of service the disability beneficiary had at such time or should any other beneficiary be restored to service, the disability beneficiary's retirement allowance shall cease, the disability beneficiary shall again become a member of the retirement system, and the disability beneficiary shall contribute thereafter at the same rate the disability beneficiary paid prior to disability. Anything in this title to the contrary notwithstanding, any prior service certificate on the basis of which the disability beneficiary's service was computed at the time of the disability beneficiary's retirement shall be restored to full force and effect; and in addition, upon the disability beneficiary's subsequent retirement, the disability beneficiary shall be credited with all the services as a member creditable to the disability beneficiary at the time of retirement; but should the disability beneficiary be restored to membership within ten (10) years of the normal service retirement age, the disability beneficiary's pension upon subsequent retirement shall not exceed the sum of the pension which the disability beneficiary was receiving immediately prior to the disability beneficiary's last restoration to membership and the pension that may have accrued to the disability beneficiary as a new member on account of service since the disability beneficiary's last restoration to membership; provided that the total pension on the disability beneficiary's subsequent retirement shall not exceed the rate percentage the disability beneficiary would have received had the disability beneficiary remained in service during the period of the disability beneficiary's prior retirement.

(1988 Code, § 23-58) (Bill No. 32-03, § 1, 7-1-2004)

#### **§ 5-1-238. ADMINISTRATION AND OPERATION OF SYSTEM.**

(a) *Board of Trustees and Director of Budget and Finance.* The responsibility for the proper operation of the Retirement System and for making effective the provisions of this subtitle shall be vested in a Board of Trustees. The general administration of the Retirement System shall be vested in the Director of Budget and Finance.

(b) *Actuarial services and compensation.* The Board of Trustees shall engage such actuarial and other services as shall be required to transact the business of the Retirement System. The compensation of all persons engaged by the Board of Trustees and all other expenses of the Board necessary for the operation of the Retirement System shall be paid at such rates and in such amounts as the Board of Trustees shall approve and in accordance with appropriations made by the employer.

(1988 Code, § 23-68) (Bill No. 49-96, § 13, 7-1-1996; Bill No. 32-03, § 1, 7-1-2004)

**§ 5-1-239. BOARD OF TRUSTEES--ADOPTION OF RULES AND REGULATIONS.**

Subject to the limitations of this subtitle, the Board of Trustees shall, from time to time, establish rules and regulations for the administration of the funds created hereby and for the transaction of its business.

(1988 Code, § 23-74) (Bill No. 32-03, § 1, 7-1-2004)

**§ 5-1-240. SAME --HEARINGS.**

The Board of Trustees may hold hearings when deemed necessary in the performance of its duty, the hearings to be governed by the rules and regulations of the Board, and the Board shall not be bound by technical rules of evidence.

(1988 Code, § 23-75) (Bill No. 32-03, § 1, 7-1-2004)

**§ 5-1-241. SAME--PRESERVING ACTUARIAL DATA.**

The Board of Trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the Retirement System and for checking the experience of the system.

(1988 Code, § 23-76) (Bill No. 32-03, § 1, 7-1-2004)

**§ 5-1-242. MEDICAL BOARD.**

The Board of Trustees shall designate a Medical Board to be composed of three (3) physicians not eligible to participate in the Retirement System. If required, other physicians may be employed to report on special cases. The Medical Board shall arrange for and pass upon all medical examinations required under the provisions of this subtitle, shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the Board of Trustees its conclusions and recommendations upon all the matters referred to it.

(1988 Code, § 23-79) (Bill No. 32-03, § 1, 7-1-2004)

## GROUP F AND G RETIREMENT PLAN PROVISIONS

	GROUP F - Police	GROUP G - Fire
<b>Member Contributions</b>	Optional non-integrated members pay 8.5% of regular earnings (hired before 7/1/78 and <b>did not</b> elect to transfer to the Optional Integrated Plan)	Optional non-integrated members pay 8.5% of regular earnings
	Optional integrated members pay 4.75% of regular earnings up to the maximum Social Security wage base, plus 8.5% of regular earnings above that amount (hired before 7/1/78 and elected to transfer to the Optional Integrated Plan)	Optional integrated members pay 4.75% of regular earnings up to the maximum Social Security wage base, plus 8.5% of regular earnings above that amount.
	Mandatory integrated members pay 4.75% of regular earnings up to the maximum Social Security wage base, plus 8.5% of regular earnings above that amount (hired on or after 7/1/78)	<p>Mandatory integrated members pay 5.50% of regular earnings up to the maximum Social Security wage base, plus 9.25% of regular earnings above that amount.</p> <p>Upon the 25<sup>th</sup> year from leave accrual date as determined by the County's payroll system, 4.75% of regular earnings up to the maximum Social Security wage base, plus 8.5% of regular earnings above that amount.</p>
<b>Normal Retirement</b>	15 years credited service and at least age 55 <b>OR</b> 25 years credited service and any age	15 years credited service and at least age 55 <b>OR</b> 20 years credited service and any age
<b>Early Retirement</b>	<p>15 years credited service and at least age 45   <b>OR</b> 20 years credited service and age 41</p> <p>If age plus credited service equal 85 (as long as there is at least 35 years of credited service), member may elect early retirement without receiving a reduction in benefits.</p>	Not applicable

## GROUP F AND G RETIREMENT PLAN PROVISIONS

	GROUP F - Police	GROUP G - Fire
<b>Trial Retirement</b>	Represented employees are eligible	Represented employees are <u>not</u> eligible
<b>DRSP/DROP</b>	Must be at least age 46 with at least 25 years credited service to participate	Must be eligible for normal retirement to participate
	Sick leave in excess of 80 hours up to 2 years will be used towards eligibility to participate	Sick leave up to 2 years can be used towards eligibility to participate
	Can participate for up to 3 years	Can participate for up to 3 years
	Self-directed investment account; selection of investments chosen by Board of Investment Trustees	Account earns 8.25% annual interest
	Choose DRSP distribution option when enter	Choose DROP distribution option when exit
	Payroll contributions stop when begin participating in DRSP	Payroll contributions continue during participation and go into DROP account
	Service connected disability while participating: DRSP account, less an amount equal to the full actuarial value of participation time in DRSP had this time counted as credited service, plus member's service-connected disability benefit as if had never entered DRSP	Service connected disability while participating: Elect to receive either the benefit as if member had retired from DROP without disability <b>OR</b> the service-connected disability benefit as if member had never entered DROP
	Non-service connected disability while participating: Beneficiary would receive the benefit as if member had retired from DRSP without disability	Non-service connected disability while participating: Beneficiary would receive the benefit as if member had retired from DROP without disability

## GROUP F AND G RETIREMENT PLAN PROVISIONS

	GROUP F - Police	GROUP G - Fire
<b>DRSP/DROP cont'd</b>	Service or non-service related death while participating: Beneficiary receives balance in DRSP account plus death benefit entitled to based on payment option chosen	Service connected death while participating: Beneficiary receives greater of balance in DROP account plus death benefit entitled to based on payment option chosen OR service connected death benefit beneficiary would have received if never entered DROP and forfeit DROP account  Non-service connected death while participating: Beneficiary receive balance in DROP account plus death benefit entitled to based on payment option chosen

<b>Benefit Calculation</b>	<b>Optional Non-Integrated</b> $2.4\% \times \text{AFE} \times \text{years of CS (up to 36 years)}$	<b>Optional Non-Integrated</b> $2.5\% \times \text{AFE} \times \text{years of CS (years 1-20)}$ $+ 2.0\% \times \text{AFE} \times \text{years of CS (years 21-31)}$ $+ 2.0\% \times \text{AFE} \times \text{sick leave credits used for credited service in excess of 20 years (up to 2 years) (2.5\% for sick leave credits used for credited service for years 1-20)}$
	<b>Optional Integrated and Mandatory Integrated (before SSNRA)</b> $2.4\% \times \text{AFE} \times \text{years of CS (up to 36 years)}$	<b>Optional Integrated and Mandatory Integrated (before SSNRA)</b> $2.5\% \times \text{AFE} \times \text{years of CS (years 1-20)}$ $+ 2.0\% \times \text{AFE} \times \text{years of CS (years 21-31)}$ $+ 2.0\% \times \text{AFE} \times \text{sick leave credits used for credited service in excess of 20 years (up to 2 years) (2.5\% for sick leave credits used for credited service for years 1-20)}$

## GROUP F AND G RETIREMENT PLAN PROVISIONS

	GROUP F - Police	GROUP G - Fire
<b>Benefit Calculation con'td</b>	<p><b>Optional Integrated and Mandatory Integrated (after SSNRA)</b></p> <p>1.65% of average final earnings <b>up to</b> the maximum Social Security Covered Compensation Level x years of service (up to a maximum of 36 years) including any sick leave credits (up to 2 years)</p> <p>+ 2.4% of average final earnings <b>above</b> the maximum Social Security Covered Compensation Level x years of credited service (up to 36 years) including any sick leave credits (up to 2 years)</p>	<p><b>Optional Integrated and Mandatory Integrated (after SSNRA)</b></p> <p>1.71875% x AFE x first 20 years of Credited Service (years 1-20) + 1.3750% x AFE x next 11 years of Credited Service (years 21-31)</p> <p>+ 1.3750% x AFE x sick leave credits used for credited service in excess of 20 years (up to 2 years) (1.71875% for sick leave credits used for credited service for years 1-20)</p> <p>For earnings over the Social Security Covered Compensation Level, the calculation is the same as before SSNRA</p>
	<p><b>Service-Connected Disability</b></p> <p>The greater of normal calculation or the greater of 66-2/3% of final earnings or average final earnings</p> <p>SCD retirement does not integrate at SSNRA. If the normal calculation is greater, member is subject to Federal income tax on the amount above the 66-2/3% calculation.</p>	<p><b>Service-Connected Disability</b></p> <p>The greater of normal calculation or 52-1/2% of final earnings</p> <p><b>OR</b></p> <p>70% of final earnings if meet SSDI requirements;</p> <p>SCD retirement does not integrate at SSNRA. If the normal calculation is greater, member is subject to Federal income tax on the amount above either the 52-1/2% or 70% calculation.</p>
	<p><b>Non-Service-Connected Disability</b></p> <p>The greater of normal calculation or 33-1/3% of final earnings; benefit does not integrate at SSNRA, and is subject to Federal income tax</p>	<p><b>Non-Service-Connected Disability</b></p> <p>The greater of normal calculation or 33-1/3% of final earnings; benefit does not integrate at SSNRA, and is subject to Federal income tax</p>

## GROUP F AND G RETIREMENT PLAN PROVISIONS

	GROUP F - Police	GROUP G - Fire
<b>Post-Retirement Adjustments</b>	The optional non-integrated or optional integrated plan benefit will increase by 100% of the positive change in the Consumer Price Index	The optional non-integrated or optional integrated plan benefit will increase by 100% of the positive change in the Consumer Price Index
	The mandatory integrated plan benefit will increase by 100% of the positive change in the Consumer Price Index, up to 3%, and 60% of any change in the CPI greater than 3%. The total increase cannot exceed 7.5% in any year. The maximum 7.5% does not apply to disability retirees or retirees over age 65.	The mandatory integrated plan benefit will increase by 100% of the positive change in the Consumer Price Index, up to 3%, and 60% of any change in the CPI greater than 3%. The total increase cannot exceed 7.5% in any year. The maximum 7.5% does not apply to disability retirees or retirees over age 65.
<b>Transfer to RSP</b>	Represented employees are eligible	Represented employees are <b>not</b> eligible
<b>Service Connected Line of Duty Death as Active Employee</b>	Benefits payable to spouse or domestic partner and child equal to SCD 100% J&S option.	Benefits payable to spouse or domestic partner and child equal to 70% SCD 100% J&S option.

### Notes and Acronyms:

The Social Security wage base is the maximum amount of earnings that can be used to compute Social Security benefits and is subject to full Social Security taxes (established by the Federal Social Security Act). This amount changes each year. For 2009 it is \$106,800.

AFE = average final earnings

CPI = Consumer Price Index

CS = credited service

J&S = joint and survivor

RSP = Retirement Savings Plan

SCD = service connected disability

SSDI = Social Security disability

SSNRA = Social Security normal retirement age

**Sec. 33-43. Disability retirement.**

(a) **Applicability.** This Section applies to an application for disability benefits under this Article filed:

(1) an application for disability benefits filed on or after March 1, 2000, by a member who is also a member of the Police Bargaining Unit;

(b) **Definitions.** In this Section, the following words and phrases have the following meanings:

(7) *Police Disability Arbitration Board* or *Police Board* means the 3 persons designated under subsection (m)(1) to review an appeal of a decision by the Chief Administrative Officer affecting a member of the Police Bargaining Unit's right to disability benefits.

(8) *Residual functional capacity* means what the individual can still do, despite the individual's impairment. The County must give the term residual functional capacity the same meaning as the term is given by the U.S. Social Security Administration.

(9) *Substantial gainful activity* means the ability to perform a substantial level of paid work that exists in significant numbers in the national economy. An individual is able to perform a substantial level of work if the individual is able to earn more than the U.S. Social Security Administration's current monthly earnings limit that applies to the individual's impairment. The County must give the term substantial gainful activity the same meaning as the term is given by the U.S. Social Security Administration.

(d) **Disability retirement procedures.**

(5) Except for information from a member of the Firefighter/Rescuer Bargaining Unit, the Panel must not accept or consider information from a member if the information is received after the established deadline date unless the information is related to:

(A) the applicant's reinjury that occurred or was diagnosed after the deadline date; or

(B) a change in the applicant's medical condition that occurred or was diagnosed after the deadline date.

(11) For a Group G member, the amount of any lump sum retroactive disability retirement benefit must be reduced by the total amount of any temporary total disability, temporary partial disability, or permanent partial disability payments that the County made to the employee under the Workers Compensation laws after the effective date of the disability retirement.

(f) **Service-connected disability retirement.**

(3) A Group G member who has an occupational disease that is compensable under Section 9-503 of the Maryland Workers Compensation Act or who incurs esophageal, lymphatic, testicular, brain, lung, bladder, or kidney cancer, multiple myeloma, melanoma, or any blood borne pathogen, is entitled to receive service-connected disability benefits if:

(A) the employee became a member of Group G on or after July 1, 1999, and did not use, or get terminated for using tobacco products for any purpose either on-duty or off-duty while employed by the County as a Group G member; or

(B) the employee became a member of Group G before July 1, 1999 and:

(i) did not use tobacco products more than 3 times for any purpose while on-duty after June 30, 2000;

(ii) if a tobacco user, completed a tobacco-cessation program approved by the County; and

(iii) completed a cardiovascular fitness assessment and evaluation program established by the County (or by the County and the certified representative, for members of the Firefighter/Rescuer Bargaining Unit) and made a good faith effort to follow the health and fitness recommendations that resulted from the cardiovascular assessment.

(4) **Alternative placement incentive.**

(A) The Chief Administrative Officer may offer a 5-percent salary increase to an employee who:

(i) is not a member of the Police Bargaining Unit;

(D) A Group G member who accepts an alternative placement incentive:

(i) must remain a Group G member for the remainder of the member's County employment; and

(ii) is not eligible for a service-connected disability retirement based on the medical condition that existed at the time the alternative placement was made.

(g) **Medical reexamination of disability retiree.** The Chief Administrative Officer may require a member receiving disability pension payments to undergo a yearly physical examination during the 5-year period following retirement, and once in every 3-year period thereafter, until age 55 if a member of group B, E, F, or G, or age 60 if a member of group A or H. The Chief Administrative Officer must review the findings of the physical examination and take appropriate action, which may include submitting the results of the evaluation to the Disability Review Panel for a redetermination as to whether the individual qualifies for disability benefits in accordance with subsection (d). If a member refuses to submit to the examination, the Chief Administrative Officer may reduce or discontinue pension payments.

(i) **Amount of pension at service-connected disability retirement.**

(2) The County must pay a Group G member who retires on a service-connected disability retirement an annual pension calculated under Section 33-42(b)(1), except that the County must substitute final earnings for average final earnings. However, if this benefit calculation is greater than any other benefit under this subsection, the County must pay a Group G member who retires on a service-connected disability retirement between June 26, 2002, and June 30, 2007, a pension based on the member's average final earnings if that member's average final earnings result in a greater benefit than final earnings.

(3) The County must pay a Group G member who retires on a service-connected disability retirement an annual pension calculated under Section 33-42(b)(1), but the benefit must be at least 70 percent of final earnings if the Chief Administrative Officer finds, based on a recommendation from the Disability Review Panel, that the member's service-connected disability is severe enough to meet the Social Security Administration's requirements for disability, meaning that the member is unable to engage in any substantial gainful activity because of a medically determinable physical or mental impairment that can be expected to end in death or has lasted, or can be expected to last, for a continuous period of at least 12 months. The member does not have to qualify for Social Security benefits to be eligible for benefits under this subsection.

(A) The Panel must base its determination of whether or not an individual is able to engage in any substantial gainful activity on an assessment from an independent vocational expert that considers the member's age, education, work experience, transferable skills, and residual functional capacity.

(B) The Panel must determine the member's residual functional capacity and provide this information to the independent vocational expert.

(C) A Panel determination that the member's service-connected disability is severe enough to be considered a disability by the Social Security Administration is not a recommendation that the member is entitled to, or should be granted, a disability benefit by the Social Security Administration.

(D) If a member has already been granted disability benefits by the U.S. Social Security Administration when the member applies for a service-connected disability pension, the County must pay the member a pension of at least 70 percent if the Disability Review Panel finds that the award of disability benefits from the Social Security Administration was based primarily on the same medically determinable physical or mental impairment on which the Disability Review Panel awards the member a service-connected disability benefit.

(4) The County must pay a Group G member who retires on a service-connected disability retirement an annual pension calculated under Section 33-42(b)(1), but the benefit must be at least 52 ½ percent of final earnings if the Chief Administrative Officer finds, based on a recommendation from the Disability Review Panel, that:

(A) the member meets the standards to receive a service-connected disability benefit under subsection (f); and

(B) the member is not eligible to receive a benefit under subsection (i)(3).

(5) (A) The County must increase the service-connected disability pension benefit of a Group G member calculated under Section 33-42(b)(1), from a benefit of at least 52 ½ percent to a benefit of at least 70 percent, if:

(i) the U.S. Social Security Administration awards disability benefits to the member;

(ii) the member submits all relevant information about the award of disability benefits from the Social Security Administration to the Disability Review Panel within 60 days after the member receives the award;

(iii) the Disability Review Panel finds that the award of disability benefits from the Social Security Administration was based primarily on the same medically determinable physical or mental impairment on which the Disability Review Panel originally awarded the member a service-connected disability benefit; and

(a) the member applies for disability benefits with the Social Security Administration within 90 days after the date on which the Chief Administrative Officer notified the member that the amount of the service-connected disability pension benefit would be calculated under Section 33-42(b)(1), but at least 52 ½ percent; or

(b) the Chief Administrative Officer awards a service-connected disability pension benefit calculated under Section 33-42(b)(1), but at least 52 ½ percent, to the member between March 1, 2000, and December 1, 2003, and the member applies for disability benefits with the Social Security Administration no later than February 29, 2004.

(B) For a member who qualifies for an increased pension benefit under subsection (5)(A) above, the County must increase the member's service-connected pension retroactively to the date on which the pension began.

(6) Under this subsection, "final earnings" for a Group F or G member who is participating in a job-sharing program under a collective bargaining agreement between the County and a certified representative means the regular earnings that the member would have received if the member had been employed on a full-time basis on the last date of active service.

(7) The County must pay a Group F member who retires on a service-connected disability retirement on or after June 26, 2002, an annual pension calculated under subsection (i)(1). However, if the greater benefit results from the calculation under Section 33-42(b)(1), the County must pay a Group F member a pension based on the member's average final earnings if that member's average final earnings result in a greater benefit than final earnings.

(j) **Adjustment or cessation of disability pension payments.**

(C) For a Group F member who receives a non-service connected disability pension and who meets the criteria in subparagraph (A), the Chief Administrative Officer may reduce the member's disability pension payments until the amount of the disability pension payments plus the amount the employee earned or is able to earn equals 120 percent of the maximum earnings of the occupational class from which the employee was disabled.

(B) For a Group F member who receives a non-service connected disability pension, the Chief Administrative Officer must ensure that the amount of the revised pension must not exceed:

(i) the original disability retirement pension plus cost-of-living increases; or

(ii) an amount that, when added to the amount that the member earns or is able to earn, equals 120 percent of the maximum earnings of the occupational classification from which the member was disabled.

(7) The Chief Administrative Officer must not reduce the service-connected disability pension payments of a Group F or G member by income received from sources other than County Government employment.

ERS RETIREMENTS FROM 1/1/1991 TO 12/31/2008

Group G - Sworn Fire Rescue Personnel

Calendar Year	DSR	Early	Normal	NSCD	SCD	DROP
1991	2	0	1	3	10	n/a
1992	0	8	3	0	6	n/a
1993	0	0	0	1	9	n/a
1994	0	6	35	2	9	n/a
1995	0	3	0	1	10	n/a
1996	2	2	5	1	10	n/a
1997	0	3	2	1	7	n/a
1998	1	2	6	3	12	n/a
1999	1	0	1	1	15	n/a
2000	6	0	7	1	7	1
2001	1	2	2	2	10	4
2002	0	2	0	0	6	4
2003	0	1	4	1	7	30
2004	0	1	2	0	13	16
2005	0	0	3	0	8	6
2006	0	0	2	1	10	12
2007	0	0	9	0	7	9
2008	0	0	6	0	5	15
<b>TOTALS</b>	<b>13</b>	<b>30</b>	<b>88</b>	<b>18</b>	<b>161</b>	<b>97</b>

Total Retirements
16
17
10
52
14
20
13
24
18
22
21
12
43
32
17
25
25
26
<b>407</b>

SCD % Award Summary		
66 2/3%	52 1/2%	70%
10		
6		
9		
9		
10		
10		
7		
12		
15		
5	2	0
* 1	7	2
	6	0
	6	1
	12	1
	7	1
	7	3
	5	2
	5	0
<b>94</b>	<b>57</b>	<b>10</b>

**RETIREMENT TYPE KEY**

DSR = Discontinued Service Retirement  
 NSCD = Non-Service Connected Disability  
 SCD = Service Connected Disability  
 DROP = Deferred Retirement Option Plan

**NOTES**

52-1/2% and 70% effective 3/1/2000  
 SCD from 1/1/1991 to 7/1/2000 awarded at 66-2/3%  
 DROP plan effective 7/1/2000  
 \* Disability application filed prior to 3/1/00 received 66-2/3%

**Leventhal Amendment 2 makes the following changes to the current disability retirement law:**

1. Gives Group F members who are eligible for service-connected disability the same right to choose between a service-connected disability benefit and the DRSP Plan benefit (including the DRSP payoff) that Group G members currently have.
2. Adds a 4<sup>th</sup> doctor to the Disability Review Panel and changes the method used by the certified employee representatives and the County to select members. Under current law, the Panel members are appointed from a list jointly agreed upon by the certified employee representatives and the County. The Amendment would require the County to obtain a list of at least 10 qualified doctors from an impartial third party and give each party 3 alternating strikes. The CAO would appoint one member from the remaining 4. Each certified employee representative retains the right to prevent the CAO from re-appointing a member. A Panel member when the Act takes effect may continue to serve until the member's term expires.
3. Requires that all Panel members be board certified in occupational medicine or board certified in another medical specialty with at least 10 years of experience practicing occupational medicine. Current law requires the members to be a medical doctor.
4. Requires a Panel decision to be made by at least 3 members instead of 2.
5. Requires an independent medical examination in each case unless the Panel finds that it is unnecessary because of the nature and severity of the injury or illness. The results of the exam must be given to the applicant or the applicant's representative immediately after the County or the Panel receives it. An independent medical exam is permitted, but not required, under current law.
6. For a Group F member, a lump sum retroactive disability retirement benefit must be reduced by the amount of temporary total, temporary partial disability, or permanent partial disability payments made by the County under the Workers' Compensation Law. This is currently only done for Group G.
7. Requires an applicant to report a claimed accidental injury as soon as practicable, but no later than 1 year after the applicant knew or should have known that the injury is likely to be disabling. A timely submission of a workers' compensation claim for the same injury is sufficient to satisfy this requirement. These reporting requirements do not apply if the member has a mental impairment or while the member is incapacitated due to injury. There is no time requirement for reporting injuries or accidents under current law.

8. Requires a member to apply for disability within 1 year after separation from County service or by July 1, 2010, whichever is later and within 5 years after the accident causing the impairment or July 1, 2014, whichever is later. There are no time limits to file in current law.
7. The CAO must require an annual medical exam or a certificate from a medical doctor verifying a continuing disability for the 1<sup>st</sup> 5 years after retirement and every 3 years after that until age 55 for Groups B, E, F, and G or until age 60 for Groups A and H unless the CAO finds that the exam is unnecessary because of the nature and severity of the injury or illness. Current law permits this, but does not require it.
8. The Panel may require an additional IME. The retiree may appeal a decision reducing or terminating a disability retirement benefit to the appropriate arbitration board. This is new language.
9. Requires a deduction for a non-Social Security disability retirement pension from another employer for the same impairment. This is new language.
10. Eliminates the requirement that a member's disability benefit be reduced by the amount of Social Security disability benefits received by a Group F member who received a disability retirement benefit on or after July 1, 2002. Current law requires the reduction.
11. Permits a reduction for outside earnings by a Group F member as a sworn law enforcement officer with another government agency. Service-connected disability benefits for a Group F member are not subject to reduction for any non-County outside earnings under current law.



20 (A) A DRSP participant who is eligible for a service-  
21 connected disability retirement [[will receive the balance  
22 in the DRSP account less an amount equal to the full  
23 actuarial value of the credited service which the  
24 employee would have received if the employee had not  
25 participated in the program. If an employee's  
26 participation in the program ends before a final decision  
27 is made on the disability retirement application, the  
28 balance of the DRSP account will not be distributed until  
29 a final decision is made.]] must choose either:

30 (i) the retirement benefit under the DRSP and the  
31 DRSP account balance; or

32 (ii) the service-connected disability retirement benefit  
33 that the employee would have received if the  
34 employee had continued as an active employee and  
35 had not elected to participate in the DRSP, and no  
36 DRSP account balance.

37 (B) A DRSP participant who is eligible for a non-service-  
38 connected disability retirement benefit must receive the  
39 non-service-connected disability retirement benefit under  
40 Section 33-43(h), with the benefit calculated as of the  
41 member's DRSP exit date, plus the DRSP account  
42 balance.

43 \* \* \*

44 **33-43 Disability retirement.**

45 (a) *Applicability.* This Section applies to[:(1)] an application for  
46 disability benefits filed [[on or after March 1, 2000, by a member who

47 is also a member of the Police Bargaining Unit; (2) an application for  
48 disability benefits after May 18, 1995,]] by any [[other]] member[[:]]  
49 or [[(3)]] a medical reevaluation of a disability retiree under  
50 subsection (g) [[, regardless of when an application for disability  
51 benefits was filed]].

52 (b) *Definitions.* In this Section, the following words and phrases have the  
53 following meanings:

54 [[(1)]] *Applicant* means any member [[defined in subsection (a)]] who  
55 has filed an application for disability retirement under subsection  
56 (d)(1).

57 [[(2)]] *Certified representative* means an employee organization  
58 certified under Section 33-79, 33-106, or 33-151 to represent a  
59 bargaining unit.

60 [[(3)]] *Disability Arbitration Board* or *Board* means one of the 3  
61 panels designated under subsection (m)(1) to review an appeal of the  
62 Chief Administrative Officer's final decision regarding an application  
63 for disability benefits filed by any member except a member of the  
64 Police Bargaining Unit.

65 [[(4)]] *Disability Review Panel* or *Panel* means the [[3]] 4 medical  
66 doctors appointed as Panel members by the Chief Administrative  
67 Officer [[in accordance with]] under subsection (c).

68 [[(5)]] *Medical doctor* means a doctor of medicine or osteopathy who  
69 [has] graduated from a medical school accredited by the American  
70 Medical Association and [[who]] is licensed to practice medicine in  
71 [[the State of]] Maryland.

72           [[6]] *Medical specialty* means a field of medicine, such as  
73 orthopedic surgery or neurology, which requires specialized training  
74 and certification.

75           *Occupational medicine* means a medical specialty which focuses on  
76 the health of workers, including the ability to perform work; the  
77 physical, chemical, biological, and social environments of the  
78 workplace; and the health outcomes of environmental exposures.  
79 Practitioners of occupational medicine address the promotion of  
80 health in the work place and the prevention and management of  
81 occupational and environmental injury, illness, and disability.

82           [[7]] *Police Disability Arbitration Board* or *Police Board* means the  
83 3 persons designated under subsection (m)(1) to review an appeal of a  
84 decision by the Chief Administrative Officer affecting a member of  
85 the Police Bargaining Unit's right to disability benefits.

86           [[8]] *Residual functional capacity* means what the individual can  
87 still do, despite the individual's impairment. The County must give  
88 the term residual functional capacity the same meaning as the term is  
89 given by the U.S. Social Security Administration.

90           [[9]] *Substantial gainful activity* means [[the ability to perform a  
91 substantial level of paid work that exists in significant numbers in the  
92 national economy]] a level of productive work that requires  
93 significant physical or mental duties, or a combination of both,  
94 performed for pay or profit on a full-time or part-time basis. An  
95 individual is able to perform a substantial level of work if the  
96 individual is able to earn more than the U.S. Social Security  
97 Administration's current monthly earnings limit [[that applies to the  
98 individual's impairment]] for a disabled person. The County must

99 give the term substantial gainful activity the same meaning as the term  
100 is given by the U.S. Social Security Administration.

101 (c) *Selection of the Disability Review Panel.*

102 (1) The Chief Administrative Officer must appoint ~~[[the 3]]~~ 4  
103 members of the Disability Review Panel from a list of at least  
104 10 impartial, unbiased medical doctors willing and able to serve  
105 [[agreed upon by the certified representatives and the County]]  
106 provided by one or more impartial medical organizations  
107 retained by the Chief Administrative Officer. If the list of  
108 doctors provided by the impartial medical organization is not  
109 agreed to by the certified representatives and the County, the  
110 certified representatives may collectively strike 3 names from  
111 the list and the County may strike 3 names from the list by  
112 alternating strikes. The CAO must appoint a member from the  
113 remaining 4 names on the list.

114 (2) The Chief Administrative Officer must [[ensure that no 2  
115 members of the Panel practice in the same medical specialty]]  
116 appoint members who are either:

117 (A) certified by the American Board of Preventive Medicine  
118 (or a successor organization) as a specialist in  
119 occupational medicine; or

120 (B) certified in a different medical specialty and have at least  
121 10 years of experience practicing occupational medicine.

122 (3) (A) The Chief Administrative Officer must appoint members  
123 under subsection (c)(1) for staggered 3-year terms. To  
124 implement the staggered terms, the Chief Administrative  
125 Officer must appoint the first member to a 3-year term,

126 the second member to a one-year term, and the third and  
127 fourth ~~[[member]]~~ members to a 2-year term. After these  
128 initial appointments, the Chief Administrative Officer  
129 must appoint all members to 3-year terms, except for any  
130 member appointed under subsection (c)(6) to fill a  
131 vacancy ~~[[created by a Panel member's death, disability,~~  
132 ~~resignation, non-performance of duty or other cause]]~~.

133 (B) After the Chief Administrative Officer appoints or  
134 reappoints a Panel member, the Chief Administrative  
135 Officer must promptly ~~[[provide]]~~ send each certified  
136 representative ~~[[with]]~~ a copy of the document  
137 confirming the appointment.

138 (4) ~~[[At the expiration of]]~~ When a Panel member's term expires,  
139 the Panel member ~~[[is eligible for reappointment]]~~ may be  
140 reappointed to a new 3-year term unless, at any time within 30  
141 days to 60 days prior to the expiration of the term, a certified  
142 representative notifies the County and the other certified  
143 representatives or the County notifies the certified  
144 representatives that it objects to the reappointment of the Panel  
145 member. If there is no objection, the Panel member is eligible  
146 to serve an additional term or terms.

147 (5) ~~[[In the event]]~~ If a Panel member declines to be reappointed to  
148 the Panel, ~~[[a new medical doctor must be appointed by]]~~ the  
149 Chief Administrative Officer must appoint a new Panel member  
150 from a list of ~~[[5]]~~ at least 10 medical doctors ~~[[agreed upon by~~  
151 ~~the certified representatives and the County]]~~ as provided for in  
152 subsection (c)(1).

153 (6) If a vacancy on the Panel is created by a Panel member's death,  
154 disability, resignation, non-performance of duty, or other cause,  
155 the Chief Administrative Officer must appoint a medical doctor  
156 to complete the Panel member's term[. The Chief  
157 Administrative Officer must appoint the Panel member]] from a  
158 list of [[5]] at least 10 medical doctors [[agreed upon by the  
159 certified representatives and the County]] as provided for in  
160 subsection (c)(1).

161 (7) The County must pay the impartial medical organization  
162 retained by the County and each Panel member reasonable  
163 compensation, as determined by the Chief Administrative  
164 Officer, for [[his or her]] services rendered.

165 (d) *Disability retirement procedures.*

166 \* \* \*

167 (6) The Panel must meet [[as a body]] in person and review and  
168 consider all evidence submitted to it no later than 60  
169 [[calendar]] days after the application is filed. A majority vote  
170 [[on a decision]] of 3 members is required to take any action  
171 [[in accordance with the provisions of]] under this Section.  
172 [will prevail. [[If only 2 Panel members participate in the  
173 decision-making process, the vote on a decision to take any  
174 action must be unanimous. No action may be taken upon a  
175 decision made by one Panel member]]

176 \* \* \*

- 177 (8) (A) [[If]] Before making its recommendation, the Panel [[is  
178 unable to make a determination based on the evidence  
179 presented to it, the Panel may]] must:
- 180 (i) direct the applicant to undergo [[a]] an  
181 independent medical examination (including all  
182 relevant medical tests) by a medical doctor who is  
183 not a member of the Disability Review Panel,  
184 unless the Panel finds that a medical examination  
185 is unnecessary because of the nature and severity  
186 of the injury or illness; and
- 187 (ii) if required for the Panel to make a  
188 recommendation [[under Section 33-43(i)(2)]] as  
189 to residual functional capacity or substantial  
190 gainful capacity, request an independent vocational  
191 assessment.
- 192 (B) The County must pay the cost of the examination and  
193 assessment. The results of the examination, including  
194 findings, conclusions, medical opinions and diagnoses,  
195 must be given to the applicant or the applicant's  
196 representative immediately after the County or the Panel  
197 receives it.
- 198 (C) The Panel must issue its written recommendation within  
199 30 [[calendar]] days after the Panel receives the later of:
- 200 (i) the full report from the medical doctor who  
201 conducted the examination; or
- 202 (ii) the full report of the results of the independent  
203 vocational assessment.

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\* \* \*

(11) For a Group F or Group G member, the amount of any lump sum retroactive disability retirement benefit must be reduced by the total amount of any temporary total disability, temporary partial disability, or permanent partial disability payments that the County ~~[[made]]~~ paid to the employee under the Workers Compensation laws after ~~[[the effective date of]]~~ the disability retirement took effect.

\* \* \*

(f) *Service-connected disability retirement.*

(1) A member may be retired on a service-connected disability retirement if:

\* \* \*

(E) for an accidental injury that does not cause mental impairment, the member:

(i) reports the claimed accidental injury as soon as practicable, but no later than one year after the applicant knew or should have known that the injury is likely to be disabling; or

(ii) submits a claim for Workers' Compensation benefits for the accidental injury that is not dismissed as untimely.

(iii) The time periods for reporting in subparagraphs (i) and (ii) do not begin while the member is unable to report because of incapacitating injuries.

(F) for an accidental injury that occurs after July 1, 2009, the member must apply for disability benefits:

- 231 (i) within one year after separation from County  
 232 service or before July 1, 2010, whichever is later;  
 233 and  
 234 (ii) within 5 years after the date of the accident  
 235 causing the impairment or before July 1, 2014,  
 236 whichever is later, unless the member is in a  
 237 chronic incapacity duty assignment.

238 (2) A Group F member who otherwise satisfies the requirements of  
 239 subsection (f)(1) must not be denied a disability retirement  
 240 because the member is able to perform a chronic incapacity  
 241 duty assignment.

242 ~~[(2)]~~ (3) \* \* \*  
 243 ~~[(3)]~~ (4) \* \* \*  
 244 ~~[(4)]~~ (5) \* \* \*

245 (g) *Medical reexamination of disability retiree.* The Chief Administrative  
 246 Officer ~~[[may]]~~ must require a member receiving disability pension  
 247 payments to undergo either a yearly physical examination or to submit  
 248 a medical doctor's certificate verifying continuation of the disability  
 249 during the ~~[[5-year period following]] 5 years after~~ retirement, and  
 250 once in every ~~[[3-year period]] 3 years~~ thereafter, until age 55 ~~[[if]]~~  
 251 for a member of group B, E, F, or G, or age 60 ~~[[if]]~~ for a member of  
 252 group A or H, unless the CAO finds that a physical examination is  
 253 unnecessary because of the nature and severity of the injury or illness.  
 254 The Chief Administrative Officer must review the findings of the  
 255 physical examination and take appropriate action, which may include  
 256 submitting the results of the evaluation to the Disability Review Panel  
 257 for a redetermination ~~[[as to]]~~ whether the individual qualifies for

258 disability benefits in accordance with subsection (d). If a member  
259 ~~[[refuses to]]~~ does not submit to the examination, the Chief  
260 Administrative Officer may reduce or discontinue any disability  
261 pension payments which the member receives. The Disability Review  
262 Panel may require the member to submit to an additional independent  
263 medical examination. A member may appeal a decision to reduce or  
264 discontinue disability pension payments to the appropriate Disability  
265 Arbitration Board.

266 \* \* \*

267 (j) *Adjustment or cessation of disability pension payments.*

268 \* \* \*

269 (2) (A) The Chief Administrative Officer may reduce the amount  
270 of the disability pension payments of a member who:

271 (i) has not reached the normal retirement date; and

272 (ii) is engaged in, or is able to engage in, an  
273 occupation that pays more than the difference  
274 between ~~[[the amount of]]~~ the disability pension  
275 payments and the current maximum earnings of  
276 the occupational classification from which the  
277 ~~[[employee]]~~ member was disabled.

278 (B) ~~[[For]]~~ If a member other than a Group F member  
279 ~~[[who]]~~ meets the criteria in subparagraph (A), the Chief  
280 Administrative Officer may reduce the member's  
281 disability ~~[[person]]~~ pension payments until ~~[[the amount~~  
282 ~~of]]~~ the disability pension payments plus the amount that  
283 the employee earned or is able to earn equals the

284 maximum earnings of the occupational class from which  
285 the member was disabled.

286 (C) ~~[[For]]~~ If a Group F member ~~[[who]]~~ receives a non-  
287 service connected disability pension and ~~[[who]]~~ meets  
288 the criteria in subparagraph (A), the Chief Administrative  
289 Officer may reduce the member's disability pension  
290 payments until ~~[[the amount of]]~~ the disability pension  
291 payments plus the amount the employee earned or is able  
292 to earn equals 120 percent of the maximum earnings of  
293 the occupational class from which the employee was  
294 disabled.

295 (D) If a member receives a non-Social Security disability  
296 retirement pension from another employer for the same  
297 impairment, the Chief Administrative Officer must  
298 reduce the member's disability pension payments by the  
299 amount of the other disability retirement pension.

300 \* \* \*

301 (6) For ~~[[those employees]]~~ any employee, except as provided  
302 below, who enrolled or re-enrolled in the retirement system on  
303 or after July 1, 1978, the member's disability retirement benefit  
304 for any month must be integrated with the primary disability  
305 benefits received from Social Security, and the total benefits  
306 from both sources must not exceed 100% of the member's  
307 average final earnings, ~~[[of the member; provided, however,~~  
308 that this limitation]] This limit does not apply to ~~[[the]]~~ cost-of-  
309 living adjustments ~~[[issued pursuant to]]~~ made under Section  
310 33-44(c). The benefit for a Group F member who received a

311 disability retirement benefit on or after July 1, 2002, must not  
312 be integrated with the primary disability benefits received from  
313 Social Security, and the total benefits from both sources may  
314 exceed 100% of the member's average final earning.

315 (7) The Chief Administrative Officer must not reduce the service-  
316 connected disability pension payments of a Group F or G  
317 member by earned income received from [[sources]] any source  
318 [[other than]] except:

- 319 (A) County Government employment; or
- 320 (B) for a Group F member, employment as a sworn law  
321 enforcement officer with full powers of arrest and  
322 authority to carry a firearm in connection with that  
323 employment.

324 \* \* \*

325 **33-128. Definitions.**

326 In this Division, the following words and phrases have the following meanings:

327 [[a)] Administrator means either the Chief Administrative Officer or the  
328 entity that contracts with the County to administer this disability plan.

329 [[b)] Applicant means an employee who has filed an application for  
330 benefits under Division 2 of Article VIII, or for whom the Chief  
331 Administrative Officer has filed an application.

332 [[c)] Certified representative means an employee organization certified  
333 under Sections 33-79, 33-106, or 33-151 to represent a bargaining unit.

334 [[d)] Continued non-service-connected disability means a condition of the  
335 employee that:

- 336 (1) continues after [[the close of]] the period of initial non-service-  
337 connected disability closes;

- 338 (2) makes the employee unable to engage in any available  
339 employment commensurate with the employee's training or  
340 retraining, education, and experience [[of the employee]]; and  
341 (3) is likely to be permanent.

342 [[(e)]] *Continued service-connected disability for a non-public safety*  
343 *employee* means a condition of a non-public safety employee that:

- 344 (1) continues after [[the close of]] the period of initial service-  
345 connected disability closes;
- 346 (2) makes the employee unable to engage in available employment  
347 commensurate with the employee's training or retraining,  
348 education, and experience [of the employee]; and  
349 (3) is likely to be permanent.

350 [[(f)]] *Continued service-connected disability for a public safety employee*  
351 means a condition of a public safety employee that:

- 352 (1) continues after [[the close of]] the period of initial service-  
353 connected disability closes;
- 354 (2) makes the employee unable to:
- 355 (A) engage in available employment commensurate with the  
356 employee's training or retraining, education, and  
357 experience [[of the employee]]; and  
358 (B) earn substantially similar final earnings; and  
359 (3) is likely to be permanent.

360 [[(g)]] *County* means Montgomery County Government and, when  
361 applicable, any agency that adopts this plan under an adoption agreement  
362 approved by the Chief Administrative Officer.



- 389 (1) is the natural and proximate result of an accident, illness, or  
390 injury occurring, an occupational disease incurred, or a  
391 condition aggravated while in the performance of duty as an  
392 employee;
- 393 (2) is not due to the employee's willful misconduct or willful  
394 negligence [[of the employee]]; and
- 395 (3) makes the employee incapable of performing the job that the  
396 employee performed immediately before the accident, illness,  
397 or injury.

398 [[n]] *Medical doctor* means a doctor of medicine or osteopathy who [[has]]  
399 graduated from a medical school accredited by the American Medical  
400 Association and [[who]] is licensed to practice medicine in [[the State of]]  
401 Maryland.

402 [[o]] *Non-public safety employee* means any employee who is not a public  
403 safety employee.

404 [[p]] *Plan* means the disability benefits plan established under this  
405 Division.

406 [[q]] *Public safety employee* means any employee who is a:

- 407 (1) sworn, ranking officer of the [[Montgomery County]] Police  
408 Department;
- 409 (2) paid firefighter, paid fire officer, or paid rescue service  
410 employee of the [[Montgomery County Department of]] Fire  
411 and Rescue [[Services]] Service;
- 412 (3) sworn deputy sheriff;
- 413 (4) [[Montgomery County]] correctional officer; or
- 414 (5) correctional staff member, if designated as a public safety  
415 employee by the Chief Administrative Officer.

416 **33-129. Disability benefits.**

417 \* \* \*

418 (d) *Initial service-connected disability benefits.* [[If the administrator  
419 determines that an employee has incurred an initial service-connected  
420 disability, the]] An employee [[is entitled to]] may receive disability  
421 benefits for a period of 36 consecutive months, subject to this plan, if  
422 the administrator finds that:

423 (A) the employee has incurred an initial service-connected  
424 disability; and

425 (B) for an accidental injury that does not cause mental  
426 impairment, the employee:

427 (i) reports the claimed accidental injury as soon as  
428 practicable, but no later than one year after the  
429 applicant knew or should have known that the  
430 injury is likely to be disabling; or

431 (ii) submits a claim for Workers' Compensation  
432 benefits for the accidental injury that is not  
433 dismissed as untimely.

434 (iii) The time periods for reporting in subparagraphs (i)  
435 and (ii) do not begin while the applicant is unable  
436 to report because of incapacitating injuries.

437 (C) for an accidental injury that occurs after July 1, 2009, the  
438 applicant must apply for disability benefits:

439 (i) within one year after separation from County  
440 service or before July 1, 2010, whichever is later;  
441 and

442 (ii) within 5 years after the date of the accident  
443 causing the impairment or before July 1, 2014,  
444 whichever is later.

445 \* \* \*

446 (f) *Role of the Disability Review Panel.*

447 (1) The Disability Review Panel must consider an application for  
448 disability benefits to determine if the applicant is eligible for  
449 disability benefits under subsection (a), (b), (c), (d), or (e). The  
450 Panel may consider any information or material submitted by  
451 the applicant, the certified representative, or the County.  
452 Within 60 days after the application is filed, the Panel must  
453 meet ~~[[as a body]]~~ in person to ~~[[consider]]~~ review all evidence  
454 submitted to the Panel. An action by the Panel under this  
455 Section requires ~~[[2 votes]]~~ a majority vote of 3 members.

456 \* \* \*

457 (5) ~~[[If]]~~ Before making its recommendation, the Panel ~~[[cannot~~  
458 ~~determine the applicant's eligibility for disability benefits based~~  
459 ~~on the evidence presented, the Panel may]]~~ must require the  
460 applicant to complete a medical examination, including relevant  
461 medical tests, by a medical doctor who is not a member of the  
462 Disability Review Panel, unless the Panel finds that a medical  
463 examination is unnecessary because of the nature and severity  
464 of the injury or illness. The County must pay the cost of the  
465 examination. The results of the examination must be given to  
466 the applicant or the applicant's representative immediately after  
467 the County or the Panel receives it. The Panel must issue its  
468 written recommendation within 30 days after the medical doctor

469 reports to the Panel.

470 \* \* \*

471 **33-135. Medical examination.**

472 (a) The Administrator [[may]] must require any employee receiving  
473 continued disability payments to undergo annual or less frequent  
474 medical examinations, or to submit a medical doctor's certificate  
475 verifying the continuation of the disability, unless the Administrator  
476 finds that a physical examination in a specific case is unnecessary  
477 because of the nature and severity of the injury or illness. The  
478 Administrator must submit the findings of [[the]] any medical  
479 examination to the Disability Review Panel. The Disability Review  
480 Panel may require the employee to submit to an additional  
481 independent medical examination. An employee may appeal a  
482 decision to reduce or discontinue disability pension payments to the  
483 appropriate Disability Arbitration Board.

484 **Sec. 2. Transition.** A member of the Disability Review Panel when this Act  
485 takes effect may continue to serve until the expiration of the Panel member's term.  
486 All appointments to the Panel made after this Act takes effect, including the re-  
487 appointment of a qualified existing Panel member, must be made pursuant to this  
488 Act.

	<b>Current Law</b>	<b>Committee Bill</b>	<b>Leventhal Amendment</b>	<b>Recommended By Co. Exec., IG<sup>1</sup>, MCA</b>
<i>1. Disability Review Panel</i>	3 doctors jointly selected with unions	4 doctors selected by County from list developed by impartial 3d party medical organization	4 doctors selected from list developed by impartial 3d party by alternate strikes for unions and County	IG, MCA
<i>2. Qualifications for Disability Review Panel</i>	Medical doctors	2 board certified in occupational medicine or 10 years experience in occupational medicine. All 4 must be medical doctors.	4 board certified in occupational medicine or 10 years experience in occupational medicine.	MCA
<i>3. Role of Disability Review Panel</i>	Make initial determination of eligibility.	Make determination of specific medical issues only.	Make initial determination of eligibility.	IG, MCA
<i>4. Panel members for decision</i>	2	Majority vote of 3. Minority written opinion required.	Majority vote of 3.	MCA
<i>5. Final decision</i>	CAO.	Administrative Board.	CAO.	IG, MCA
<i>6. Appeal</i>	3 member arbitration board. Separate board for Police.	1 neutral labor arbitrator.	3 member arbitration board. Separate board for Police.	
<i>7. IME</i>	IME optional.	IME required except where unnecessary.	IME required except where unnecessary. IME must be given to applicant.	IG, MCA
<i>8. Applicants who commit felony</i>	No limits.	Limit benefit based upon final earnings at time offense was committed.	No limits.	CE, IG

<sup>1</sup> Based upon the IG letter reviewing the Bill dated January 29, 2009.

<i>9. Group F reduction for outside employment.</i>	No reduction except for County service.	No reduction except for County service.	Reduction if employed as a sworn police officer by another government.	CE
<i>10. Required notice of accident</i>	None.	30 days after accident.	1 year after applicant knew or should have known if injury was likely to be disabling, unless mental impairment.	CE, IG, MCA
<i>11. Application deadlines</i>	None.	1 year after separation. 5 years after accidental injury.	1 year after separation and 5 years after accidental injury with grandfather clause.	CE, IG, MCA
<i>12. 2 tier system of benefits</i>	All receive 66 2/3 % of final earnings.	Total incapacity – 70% Partial incapacity – 52 1/2 %	All receive 66 2/3 %.	IG, MCA
<i>13. Medical Re-examination of retirees.</i>	CAO may require.	CAO must require unless unnecessary.	CAO must require either medical re-examination or doctor's certificate unless unnecessary.	IG, MCA
<i>14. Applicant's prior medical records</i>	No requirement.	Requires 5 years before County service.	No requirement.	
<i>15. Time to appeal to arbitrator</i>	20 days after receipt.	30 days after mailed.	20 days after receipt.	
<i>16. Coordination with DRSP</i>	Group F can receive DRSP account balance and disability retirement benefit.	Group F can receive DRSP account balance and disability retirement benefit.	Group F must choose either disability benefit or DRSP.	CE

<i>17. Reduction for temporary total, temporary partial, or permanent partial workers' comp benefit</i>	No reduction.	No reduction.	Yes.	
<i>18. Deduction for disability benefit from another employer for same injury.</i>	No.	Yes.	Yes.	IG
<i>19. Integration with social security disability benefit.</i>	Yes.	Yes.	No.	CE
<i>20. Changes subject to bargaining.</i>	Not applicable.	No.	Yes.	

W-E Bode  
8/1/82

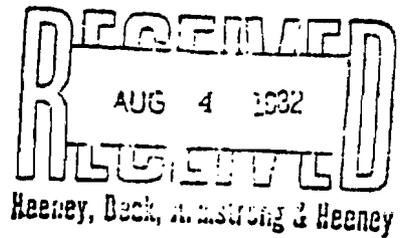
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UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND  
No. 1466  
September Term, 1981

MONTGOMERY COUNTY,  
MARYLAND

v.

CHARLES R. WHITTAKER, JR.



Liss  
Wilner  
Bowling, George W.  
(specially assigned).

JJ.

PER CURIAM

Filed: August 3, 1982

PER CURIAM:

Appellee, Charles R. Whittaker, Jr., began employment as a police officer with the Montgomery County Police Department on September 1, 1972. On January 23, 1976, while on duty in his patrol car, Whittaker was struck by a drunk driver. In March, 1976, after diagnosis of a herniated disc, a partial laminectomy was performed on his back. In May, 1976, a second operation was performed after exploratory surgery revealed a nerve root cut. On July 26, 1976, appellee returned to light duty in the Communication Division of the Police Department. On October 16, 1977, he was returned to regular patrol duty.

On March 24, 1979, appellee fell and reinjured his back while in pursuit of a suspect. He was again hospitalized and was diagnosed as having degenerative disc disease at the L-4-5 level with moderate anterior osteophyte formation. Thereafter, in June and August of 1979, the appellee was found to have "a permanent disability of his back" and "is not fit at this time for routine duties as a policeman." He was listed as "permanently and totally disabled for gainful employment as a police officer" and his permanent partial physical impairment was evaluated at between 25-75% permanent.

Appellee applied to the Disability Retirement Hearing Board of Montgomery County for a service connected disability retirement and was granted retirement on the basis of a 25% permanent partial disability effective May 8, 1980. Appellee then appealed to the Montgomery County Personnel Board, which sustained the Disability

Retirement Board's finding. Appellee thereupon noted a timely appeal to the Circuit Court for Montgomery County. After a hearing, the trial judge entered an order reversing the decision of the Montgomery County Personnel Board and found that the appellee was entitled to full disability retirement benefits. The appellant herein, Montgomery County, thereupon filed a timely appeal and they ask us to determine

Whether the trial court erred in its construction of the Disability Retirement Act, Section 33-43 et. seq. of the Montgomery County Code (1972, 1977 Repl. Vol., 1980 Cum. Supp.) in holding that a finding that an employee can no longer perform the tasks of the specific job to which assigned at the time of the disability requires a concurrent finding that said employee is totally and permanently incapacitated and is thereby entitled to full disability retirement.

The purpose of the Montgomery County Disability Retirement Act is analogous to that of the Maryland Workmen's Compensation Act, i.e., to provide compensation for loss of earning capacity to those employees who are no longer able to perform the duties of their job classification or the duties of a position of comparable status within the same department as a result of a service connected disability, i.e., an accidental injury, occupational disease, a condition aggravated while in the actual performance of duty. See Sections 33-34 and 33-43 of the Montgomery County Code; Howard County Association for Retarded Citizens, Inc. v. Walls, 288 Md. 526, 418 A.2d 1210 (1980); Queen v. Agger, 287 Md. 342, 412 A.2d 733 (1980); Edgewood Nursing Home v. Maxwell, 282 Md. 422, 384 A.2d 748 (1978); Nooe v. City of Baltimore, 28 Md. App. 348, 345 A.2d 134 (1975).

The controversy in this case arises out of the criterion for determining eligibility for full service-connected disability, within the meaning of the Disability Retirement Act of the Montgomery County Code, Section 33-43, et seq. The pertinent section is 33-43(f)(1) which, before 1978, read as follows:

(f) Amount of pension at service connected disability retirement.

The yearly amount of pension payable upon service connected disability retirement will equal:

(1) If the member is totally and permanently incapacitated and incapable of earning a livelihood, two percent of final earnings, multiplied by years of credited service, up to a maximum of thirty-six, but not less than fifty percent of final earnings. . . .

Montgomery County

In an amendment adopted by the / Council in 1978, the language of this section was changed to delete the phrase "incapable of earning a livelihood,"<sup>1</sup> and the test since 1978 has been a requirement that there be a total and permanent incapacity arising out of a service-connected disability.

---

1. Section 33-43(f)(1) now reads as follows:

(f) Amount of pension at service-connected disability retirement.

The yearly amount of pension payable upon retirement for service connected disability will equal:

(1) Two percent of final earnings, multiplied by years of credited service, up to a maximum of thirty-six years, plus sick leave credits, but not less than sixty percent of final earnings, if the member is totally and permanently incapacitated, or . . . .

The Disability Retirement Act as amended by the County Council does not attempt to define this standard of disability nor does the phrase "total permanent incapacity" lend itself to the simple determination of what amounts to the intended criterion. The appellant contends that the section as now written means that there must be an incapacity on the part of the employee to perform any useful or gainful employment. The appellee urges that the phrase "total permanent incapacity" means at the most the incapacity of the retiree to perform his duties in his regular employment.

We have sought and found some clarification of the intention of the legislative body when the Disability Retirement Act was adopted by the 1972 Code. Subsection 33-43(c)(1) defines the phrases "totally incapacitated" and "permanently incapacitated" in the context of "duty." By reading this subsection it becomes clear that the 1972 standard for full, service-connected disability, within the meanings of both Sections 33-43(c)(1) and 33-43(f)(1) was totally and permanently incapacitated for duty. Under the 1972 Code there was an additional requirement that the retiree be "incapable of earning a livelihood." When in 1978 a new Section 33-43(f)(1) was adopted which deleted the second prong of the 1972 Code provision it left the new standard for full, service-connected disability the condition of being totally and permanently incapacitated for duty. Appellants argue that by definition "one who is permanently and totally incapacitated is, at once, incapable of earning a livelihood."

If this argument is correct then the Legislature most likely would not have deleted the second prong of the test while amending the 1972 version of the section. We do not agree that the language as originally included in the standard was unnecessary and redundant. Both the Court of Appeals and this Court have consistently held that the phrase "totally and permanently incapacitated" is not synonymous with "incapable of earning a livelihood." In Bullis School v. Justus, 37 Md. App. 423, 377 A.2d 876 (1977), and Dent v. Cahill, 18 Md. App. 117, 305 A.2d 233 (1973), we held that a claimant who is incapacitated to do work of any kind is still able to perform services albeit the services be limited ones. The Court of Appeals, in Richard F. Kline, Inc. v. Grosh, 245 Md. 236, 226 A.2d 147 (1967), distinguished between "total incapacity" and "total disability," holding that the former implies an ability to perform some or limited services, whereas the latter means an inability to do work of any kind.

We agree with the trial judge that the rules of logic and statutory construction, when applied to the Disability Retirement Act, require that an employee who is totally incapacitated for duty, though not totally disabled from any gainful employment, is entitled to full disability retirement benefits. This conclusion is supported by both legislative and judicial policy in the area of Workmen's Compensation Law. The Court of Appeals has on a number of occasions held that legislation of this kind should be liberally construed and

all ambiguities resolved in favor of the injured employee in order to effectuate its benevolent purposes. See Barnes v. Ezrine Tire Company, 249 Md. 557, 241 A.2d 392 (1968); Bethlehem-Sparrows Point Shipyard v. Hempfield, 206 Md. 589, 112 A.2d 488 (1954).

Based upon overwhelming evidence, the appellee was found by the Montgomery County Disability Retirement Hearing Board and the Montgomery County Personnel Board to be incapable of performing the duties of a police officer. This finding satisfies the disability standard established under the present Code provisions of Section 33-43(f)(1).

Appellant finally urges that such an interpretation of the Code section will provide a windfall to an injured employee who is unable to perform his duties as an employee of the County but is able to engage in other gainful employment. The Code itself, however, answers this argument. The Montgomery County Retirement Act recognizes this possibility and provides the means for preventing such an inequity. Section 33-43(g) provides that if a successful claimant, after an award of full disability retirement benefits, is subsequently able to engage in gainful occupation, the amount he may earn will be set off against his disability payments thereby reducing these payments. Section 33-43(g) should be an adequate safeguard against inequities.

ORDER AFFIRMED, COSTS TO BE  
PAID BY MONTGOMERY COUNTY.