

**Councilmembers should bring the April 28, 2009 Council Agenda Item 3 for Bill 37-08.  
The attachments to this packet follow the circle numbers from the April 28 packet.**

AGENDA Item 5  
May 12, 2009  
**Action/Supplement**

**MEMORANDUM**

TO: County Council

FROM: Robert H. Drummer, Legislative Attorney 

SUBJECT: **Action:** Bill 37-08, Personnel – Disability Retirement –Amendments

**Public Safety/Management and Fiscal Policy Committee recommendation:** enact the Bill with 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, May 1, and May 4. 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.

### **May 5 Worksession**

The Committee reviewed the Bill and Leventhal Amendment 2. The Committee voted to tentatively approve Leventhal Amendment 2 (5-0) as a substitute for the Committee Bill pending a response from MCGEO and the IAFF on the provisions that would affect their members. The Committee recommended approval of Berliner Amendment 3 to Leventhal Amendment 2 (3-2, Elrich and Ervin opposed).

### **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 ©152-160. 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 ©161-163.

**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 ©164-171.

### **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 (©172-176) and a description of the differences in the procedures for obtaining disability benefits. (©177-181)

### **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 ©182. 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 Committee 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. A summary of the differences between current law and Leventhal Amendment 2 is attached at ©183-184. 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 agreements 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 ©185-187. 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. **Committee recommendation (5-0):** tentatively approve the Leventhal Amendment pending review and comment from MCGEO and the IAFF on provisions that affect the employees they represent. See lines 1-489 of the Bill as approved by the Committee on May 4 at ©196-214. Although the Executive's negotiating team met with both unions, we did not receive the results of those meetings at the time of publication of this packet.

### **Berliner Amendment**

Council Vice-President Berliner presented an amendment to the Leventhal Amendment 3 at the May 4 worksession that would add an uncodified section to require a two-tiered disability system for police officers which includes a separate service-connected disability benefit for an injury or illness that prevents the employee from continuing as a police officer, but does not prevent the employee from engaging in other substantial gainful employment. The amendment would require the Executive to negotiate the terms of an appropriate two-tiered disability system with the FOP no later than the collective bargaining agreement that takes effect on July 1, 2010. **Committee recommendation (3-2, Elrich and Ervin opposed):** approve the Berliner Amendment. See lines 490-503 of the Bill as approved by the Committee on May 4 at ©214.

### **Whittaker Decision**

Walter Bader mentioned the unreported 1982 decision of the Court of Special Appeals in *Montgomery County v. Whittaker* (See ©188-194) 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.

<u>This packet contains</u>	<u>Circle</u>
Fairfax Municipal Code	152
Howard County Code	161
Baltimore County Code	164
OHR Comparison F & G Retirement	172
OHR Comparison F & G Disability	177
Group G Experience with two-tier system	182
Summary of Leventhal Amendment 2	183
Chart of differences between Bills	185
Whittaker decision	188
Bill approved by Committee on May 4	195

## 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

	<b>GROUP F - Police</b>	<b>GROUP G - Fire</b>
<b>DRSP/DROP cont'd</b>	<p>Service or non-service related death while participating: Beneficiary receives balance in DRSP account plus death benefit entitled to based on payment option chosen</p>	<p>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</p> <p>Non-service connected death while participating: Beneficiary receive balance in DROP account plus death benefit entitled to based on payment option chosen</p>

<b>Benefit Calculation</b>	<p><b>Optional Non-Integrated</b> 2.4% x AFE x years of CS (up to 36 years)</p>	<p><b>Optional Non-Integrated</b> 2.5% x AFE x years of CS (years 1-20) + 2.0% x AFE x years of CS (years 21-31) + 2.0% x AFE x 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)</p>
	<p><b>Optional Integrated and Mandatory Integrated (before SSNRA)</b> 2.4% x AFE x years of CS (up to 36 years)</p>	<p><b>Optional Integrated and Mandatory Integrated (before SSNRA)</b> 2.5% x AFE x years of CS (years 1-20) + 2.0% x AFE x years of CS (years 21-31) + 2.0% x AFE x 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)</p>

## 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 <b>OR</b> 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

Total Retirements
16
17
10
52
14
20
13
24
18
22
21
12
43
32
17
25
25
26

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>TOTALS</b>	<b>13</b>	<b>30</b>	<b>88</b>	<b>18</b>	<b>161</b>	<b>97</b>
---------------	-----------	-----------	-----------	-----------	------------	-----------

<b>407</b>
------------

<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.

	<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 ½ %	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. Boder  
8/6/82

012-0004

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1466  
September Term, 1981

MONTGOMERY COUNTY,  
MARYLAND

v.

CHARLES R. WHITTAKER, JR.

RECEIVED  
AUG 4 1982  
Heaney, Beck, Armstrong & Heaney

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.

[[Expedited]] Bill No. 37-08  
Concerning: Personnel — Disability Retirement - Amendments  
Revised: May 7, 2009 Draft No. 10  
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

By: Council President Andrews and Councilmember Trachtenberg

### 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]]~~ or after 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)]~~ (3) require an independent medical examination for a disability retirement;
- ~~[[~~(9)~~]]~~ (4) require an independent medical examination or a medical certificate for certain retirees; and ~~[[modify the appeal procedures for disability retirement;~~  
and
- ~~(10)]~~ (5) 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>
<del>[[Single boldface brackets]]</del>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<del>[[Double boldface brackets]]</del>	<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:



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 Chief Administrative Officer must  
 113 appoint a member from the 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 procedurcs.*

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.

204 \* \* \*

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

212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237

\* \* \*

(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.

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

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

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

(ii) within 5 years after the date of the accident causing the impairment or before July 1, 2014, whichever is later, unless the member is in a 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 Chief Administrative Officer finds that a  
 253 physical examination is unnecessary because of the nature and  
 254 severity of the injury or illness. The Chief Administrative Officer  
 255 must review the findings of the physical examination and take  
 256 appropriate action, which may include submitting the results of the  
 257 evaluation to the Disability Review Panel for a redetermination ~~[[as~~  
 258 ~~to]]~~ whether the individual qualifies for disability benefits in  
 259 accordance with subsection (d). If a member ~~[[refuses to]]~~ does not  
 260 submit to the examination, the Chief Administrative Officer may  
 261 reduce or discontinue any disability pension payments which the  
 262 member receives. The Disability Review Panel may require the  
 263 member to submit to an additional independent medical examination.

264 A member may appeal a decision to reduce or discontinue disability  
265 pension payments to the appropriate Disability 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 disability retirement pension,  
 296 except for a Social Security disability benefit, from  
 297 another employer for the same impairment, the Chief  
 298 Administrative Officer must reduce the member's  
 299 disability pension payments by the amount of the other  
 300 disability retirement pension.

301 \* \* \*

302 (6) For [[those employees]] any employee, except as provided  
 303 below, who enrolled or re-enrolled in the retirement system on  
 304 or after July 1, 1978, the member's disability retirement benefit  
 305 for any month must be integrated with the primary disability  
 306 benefits received from Social Security, and the total benefits  
 307 from both sources must not exceed 100% of the member's  
 308 average final earnings, [[of the member; provided, however,  
 309 that this limitation]] This limit does not apply to [[the]] cost-of-  
 310 living adjustments [[issued pursuant to]] made under Section  
 311 33-44(c). The benefit for a Group F member who received a  
 312 disability retirement benefit on or after July 1, 2002, must not  
 313 be integrated with the primary disability benefits received from  
 314 Social Security, and the total benefits from both sources may  
 315 exceed 100% of the member's average final earning.

316 (7) The Chief Administrative Officer must not reduce the service-  
 317 connected disability pension payments of a Group F or G

318 member by earned income received from ~~[[sources]]~~ any source  
 319 ~~[[other than]]~~ except:

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

325 \* \* \*

326 **33-128. Definitions.**

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

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

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

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

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

- 337 (1) continues after ~~[[the close of]]~~ the period of initial non-service-  
 338 connected disability closes;
- 339 (2) makes the employee unable to engage in any available  
 340 employment commensurate with the employee's training or  
 341 retraining, education, and experience ~~[[of the employee]]~~; and
- 342 (3) is likely to be permanent.

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

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

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

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

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

364 ~~[[h)]]~~ *Disability Arbitration Board or Board* means the 3 persons designated  
 365 under Section ~~[[33-43A(m)]]~~ 33-43(m) to review an appeal of the final  
 366 decision of the Administrator regarding an application for disability benefits.

367 ~~[[i)]]~~ *Disability Review Panel or Panel* means the ~~[[3]]~~ 4 medical doctors  
 368 appointed as Panel members by the Chief Administrative Officer under  
 369 ~~[[Section 33-43A(c)]]~~ Section 33-43(c).

370 ~~[[j)]]~~ *Employee* means ~~[[an]]~~ a County employee ~~[[of the County]]~~ who:

371 (1) participates in the retirement savings plan under this Article;  
 372 and

373 (2) is regularly scheduled to work 20 hours or more per week.

374 ~~[[k)]~~ *Final earnings* means the annual average of the regular salary of an  
 375 employee less any shift pay differential for the 18-month period immediately  
 376 before the disability or any period of 18 consecutive months, whichever is  
 377 greater.

378 ~~[[1)]~~ *Initial non-service-connected disability* means a condition of an  
 379 employee that:

380 (1) is the natural and proximate result of an accident, illness, or  
 381 injury;

382 (2) is not due to the employee's willful misconduct or willful  
 383 negligence ~~[[of the employee]]~~;

384 (3) makes the employee incapable of performing the job that the  
 385 employee performed immediately before the accident, illness,  
 386 or injury; and

387 (4) is not an initial service-connected disability.

388 ~~[[m)]~~ *Initial service-connected disability* means a condition of an  
 389 employee that:

390 (1) is the natural and proximate result of an accident, illness, or  
 391 injury occurring, an occupational disease incurred, or a  
 392 condition aggravated while in the performance of duty as an  
 393 employee;

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

396 (3) makes the employee incapable of performing the job that the  
 397 employee performed immediately before the accident, illness,  
 398 or injury.

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

403 ~~[(o)]~~ *Non-public safety employee* means any employee who is not a public  
 404 safety employee.

405 ~~[(p)]~~ *Plan* means the disability benefits plan established under this  
 406 Division.

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

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

417 **33-129. Disability benefits.**

418 \* \* \*

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

423 the administrator finds that:

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

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

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

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

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

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

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

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

446 \* \* \*

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

448 (1) The Disability Review Panel must consider an application for  
 449 disability benefits to determine if the applicant is eligible for

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

457 \* \* \*

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

471 \* \* \*

472 **33-135. Medical examination.**

473 (a) The Administrator ~~[[may]]~~ must require any employee receiving  
474 continued disability payments to undergo annual or less frequent  
475 medical examinations, or to submit a medical doctor's certificate  
476 verifying the continuation of the disability, unless the Administrator

213

477 finds that a physical examination in a specific case is unnecessary  
478 because of the nature and severity of the injury or illness. The  
479 Administrator must submit the findings of [[the]] any medical  
480 examination to the Disability Review Panel. The Disability Review  
481 Panel may require the employee to submit to an additional  
482 independent medical examination. An employee may appeal a  
483 decision to reduce or discontinue disability pension payments to the  
484 appropriate Disability Arbitration Board.

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

490 **Sec. 3. Partial Disability.** It is the policy of Montgomery County that  
491 public safety employees should have a two-tiered disability system which includes  
492 a separate service-connected disability benefit for an injury or illness that prevents  
493 the employee from continuing as a public safety employee, but does not prevent  
494 the employee from engaging in other substantial gainful employment. It is also the  
495 policy of the County that disability benefits are a mandatory subject of collective  
496 bargaining with the appropriate certified employee representative. The Executive  
497 must negotiate the terms of an appropriate two-tiered disability system with the  
498 certified employee representative of police officers no later than the collective  
499 bargaining agreement that takes effect on July 1, 2010. If the parties are unable to  
500 reach agreement on an appropriate two-tiered system, the parties must submit this  
501 issue for resolution through the applicable impasse procedures under the County's  
502 police collective bargaining law. The Executive must then submit the results of  
503 collective bargaining over this issue to the Council for legislative action.