

**78.5528 Disability retirement allowance -- Reduction -- Discontinuance -- Medical examiners -- Hearings and appeals -- Early retirement upon discontinuance of disability allowance for member who began participating before January 1, 2014.**

- (1) If the Authority's medical examiner determines that a recipient of a disability retirement allowance is, prior to his or her normal retirement date, employed in a position with the same or similar duties, or in a position with duties requiring greater residual functional capacity and physical exertion, as the position from which he or she was disabled, except where the recipient has returned to work on a trial basis not to exceed nine (9) months, the system may reduce or discontinue the retirement allowance. Each recipient of a disability retirement allowance who is engaged in gainful employment shall notify the Authority of any employment; otherwise, the system shall have the right to recover payments of a disability retirement allowance made during the employment.
- (2) If the Authority's medical examiner determines that a recipient of a disability retirement allowance is, prior to his or her normal retirement date, no longer incapacitated by the bodily injury, mental illness, or disease for which he or she receives a disability retirement allowance, the system may reduce or discontinue the retirement allowance.
- (3) The system shall have full power and authority to reduce or discontinue a disability retirement allowance and the Authority shall utilize the services of a medical examiner as provided in KRS 61.665, in determining whether to continue, reduce, or discontinue a disability retirement allowance under this section.
  - (a) The Authority shall select a medical examiner to evaluate the forms and medical information submitted by the person. If there is objective medical evidence of a mental impairment, the medical examiner may request the Authority's licensed mental health professional to assist in determining the level of the mental impairment.
  - (b) The medical examiners shall be paid a reasonable amount by the retirement system for each case evaluated.
  - (c) The medical examiner shall recommend that the disability retirement allowance be continued, reduced, or discontinued.
    1. If the medical examiner recommends that the disability retirement allowance be continued, the system shall make retirement payments in accordance with the retirement plan selected by the person.
    2. If the medical examiner recommends that the disability retirement allowance be reduced or discontinued, the Authority shall send notice of the recommendation by United States first-class mail to the person's last address on file in the retirement office.
      - a. The person shall have sixty (60) days from the day that the Authority mailed the notice to file at the retirement office additional supporting employment or medical information and certify to the Authority that the forms and additional supporting employment information or medical information are ready to be evaluated by the medical examiner or to appeal the

recommendation of the medical examiner to reduce or discontinue the disability retirement allowance by filing at the retirement office a request for a formal hearing.

- b. If the person fails or refuses to file at the retirement office the forms, the additional supporting employment information, and current medical information or to appeal the recommendation of the medical examiners to reduce or discontinue the disability retirement allowance, his or her retirement allowance shall be discontinued on the first day of the month following the expiration of the period of the sixty (60) days from the day the Authority mailed the notice of the recommendation to the person's last address on file in the retirement office.
- (d) The medical examiner shall make a recommendation based upon the evaluation of additional supporting medical information submitted in accordance with paragraph (c)2.a. of this subsection.
1. If the medical examiner recommends that the disability retirement allowance be continued, the system shall make disability retirement payments in accordance with the retirement plan selected by the person.
  2. If the medical examiner recommends that the disability retirement allowance be reduced or discontinued based upon the evaluation of additional supporting medical information, the Authority shall send notice of this recommendation by United States first-class mail to the person's last address on file in the retirement office.
    - a. The person shall have sixty (60) days from the day that the Authority mailed the notice of the recommendation to appeal the recommendation to reduce or discontinue the disability retirement allowance by filing at the retirement office a request for formal hearing.
    - b. If the person fails or refuses to appeal the recommendation of the medical examiners to reduce or discontinue the disability retirement allowance, his or her retirement allowance shall be discontinued on the first day of the month following the expiration of the period of the sixty (60) days from the day the Authority mailed the notice of the recommendation to the person's last address on file in the retirement office.
- (e) Any person whose disability benefits have been reduced or discontinued, pursuant to paragraph (c)2. or (d)2. of this subsection, may file at the retirement office a request for formal hearing to be conducted in accordance with KRS Chapter 13B. The right to demand a formal hearing shall be limited to a period of sixty (60) days after the person had notice, as described in paragraph (c) or (d) of this subsection. The request for formal hearing shall be filed with the Authority, at the retirement office in Frankfort. The request for formal hearing shall include a short and plain statement of the reasons the reduction, discontinuance, or denial of disability retirement is being contested.
- (f) Failure of the person to request a formal hearing within the period of time

specified shall preclude the person from proceeding any further with contesting the reduction or discontinuation of disability retirement allowance, except as provided in subsection (6)(d) of this section. This paragraph shall not limit the person's right to appeal to a court.

- (g) A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based. If the board orders that the person's disability retirement allowance be discontinued or reduced, the order shall take effect on the first day of the month following the day the Authority mailed the order to the person's last address on file in the retirement office. Judicial review of the final board order shall not operate as a stay and the system shall discontinue or reduce the person's disability retirement allowance as provided in this section.
  - (h) Notwithstanding any other provisions of this section, the Authority may require the person to submit to one (1) or more medical or psychological examinations at any time. The system shall be responsible for any costs associated with any examinations of the person requested by the medical examiner or the system for the purpose of providing medical information deemed necessary by the medical examiner or the system. Notice of the time and place of the examination shall be mailed to the person or his or her legal representative. If the person fails or refuses to submit to one (1) or more medical examinations, his or her rights to further disability retirement allowance shall cease.
  - (i) All requests for a hearing pursuant to this section shall be made in writing.
- (4) The board may establish an appeals committee whose members shall be appointed by the chair and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board. The board may also establish a joint appeals committee with the Kentucky Retirement Systems.
  - (5) Any person aggrieved by a final order of the board may seek judicial review after all administrative appeals have been exhausted by filing a petition for judicial review in the Franklin Circuit Court in accordance with KRS Chapter 13B.
  - (6) If a disability retirement allowance is reduced or discontinued for a person who began participating prior to January 1, 2014, the person may apply for early retirement benefits as provided under KRS 78.5510 or 78.5514, as applicable, subject to the following provisions:
    - (a) The person may not change his or her beneficiary or payment option;
    - (b) If the person has returned to employment with an employer participating in the County Employees Retirement System or the Kentucky Retirement Systems, the service and creditable compensation shall be used in recomputing his or her benefit, except that the person's final compensation shall not be less than the final compensation last used in determining his or her retirement allowance;
    - (c) The benefit shall be reduced as provided by KRS 78.5510(4) or

78.5514(4);

- (d) The person shall remain eligible for reinstatement of his or her disability allowance upon reevaluation by the medical examiners until his or her normal retirement age. The person shall apply for reinstatement of disability benefits in accordance with the provisions of this section. An application for reinstatement of disability benefits shall be administered as an application under KRS 78.5524 or 78.5526, as applicable, and only the bodily injuries, mental illnesses, diseases, or conditions for which the person was originally approved for disability benefits shall be considered. Bodily injuries, mental illnesses, diseases, or conditions that came into existence after the person's last day of paid employment shall not be considered as a basis for reinstatement of disability benefits. Bodily injuries, mental illnesses, diseases, or conditions alleged by the person as being incapacitating, but which were not the basis for the award of disability retirement benefits, shall not be considered. If the person establishes that the disability benefits should be reinstated, the system shall pay disability benefits effective from the first day of the month following the month in which the person applied for reinstatement of the disability benefits; and
  - (e) Upon attaining normal retirement age, the person shall receive the higher of either his or her disability retirement allowance or his or her early retirement allowance.
- (7) No disability retirement allowance shall be reduced or discontinued by the system after the person's normal retirement date except in case of reemployment as provided for by KRS 78.5540. If a disability retirement allowance has been reduced or discontinued, except if the person is reemployed as provided for by KRS 78.5540, the retirement allowance shall be reinstated upon attainment of the person's normal retirement date to the retirement allowance prior to adjustment. No reinstated payment shall be less than the person is receiving upon attainment of the person's normal retirement date.

**Effective:** April 1, 2021

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