

TITLE 2 PUBLIC FINANCE
CHAPTER 82 EDUCATIONAL RETIREMENT
PART 6 DISABILITY BENEFITS

2.82.6.1 ISSUING AGENCY: Educational Retirement Board, P.O. Box 26129, Santa Fe, New Mexico 87502-0129.
[2.82.6.1 NMAC - Rp, 2.82.6.1 NMAC, 10/31/2017]

2.82.6.2 SCOPE: This rule applies to disability retirement.
[2.82.6.2 NMAC - Rp, 2.82.6.2 NMAC, 10/31/2017]

2.82.6.3 STATUTORY AUTHORITY: The Educational Retirement Act, Sections 22-11-1 to 22-11-55 NMSA 1978.
[2.82.6.3 NMAC - Rp, 2.82.6.3 NMAC, 10/31/2017]

2.82.6.4 DURATION: Permanent.
[2.82.6.4 NMAC - Rp, 2.82.6.4 NMAC, 10/31/2017]

2.82.6.5 EFFECTIVE DATE: October 31, 2017 unless a later date is cited at the end of a section.
[2.82.6.5 NMAC - Rp, 2.82.6.5 NMAC, 10/31/2017]

2.82.6.6 OBJECTIVE: Clarification of procedures and requirements for disability benefits.
[2.82.6.6 NMAC - Rp, 2.82.6.6 NMAC, 10/31/2017]

2.82.6.7 DEFINITIONS: [Reserved]

2.82.6.8 ELIGIBILITY: The member is eligible when the member has met the statutory requirements for service and extent of disability if application is filed as provided in Subsection A of 2.82.6.9 NMAC.
[2.82.6.8 NMAC - Rp, 2.82.6.8 NMAC, 10/31/2017]

2.82.6.9 APPLICATION:

- A.** An application for benefits may be filed prior to, and in anticipation of a member's termination by reason of disability, or within a reasonable time following the date of termination.
 - B.** Application for disability may be initiated by the member or his employer on forms furnished by the director and made available in each local administrative unit. The member may also write to the director to apply for benefits.
 - C.** If the applicant for disability benefits is not employed at the time of application, the director shall deal directly with the member in processing the application, without reference to, or concurrence of, the last employer.
 - D.** At the time of application, the member shall furnish medical proof satisfactory to the educational retirement board, that his termination of employment is, or was, a direct result of his disability. The member's employer, or former employer shall also be requested to advise the board, in writing, of all facts pertinent to the applicant's termination, of which the employer has knowledge.
 - E.** Applicant shall furnish a list of all physicians who have examined or treated the member regarding the disability and provide copies of their reports, shall provide copies of any and all vocational rehabilitation reports made since the disability was incurred and shall provide any other information requested by the educational retirement board, the medical review authority or medical appeals hearing officer.
 - F.** An applicant may review any and all evidence, physician reports etc., which the medical review authority or medical appeals hearing officer has which pertains to his/her case.
- [2.82.6.9 NMAC - Rp, 2.82.6.9 NMAC, 10/31/2017]

2.82.6.10 EFFECTIVE DATE OF BENEFITS:

- A.** The effective date of disability benefits shall be the first day of the month following the member's termination of employment, or the first day of the month following receipt of the member's application, whichever is later.

B. The applicant for disability benefits shall not be considered to have terminated employment until all accumulated sick leave granted by the employer shall have been used. If the employer pays the member's accumulated sick leave in a lump-sum, the member's termination date shall be the date on which the last day would have been paid had payment been made in due course, rather than in a lump-sum.

C. In the absence of any other formal declaration of termination of employment, the member's application for disability benefits shall serve as declaration as of the date indicated thereon by employer. [2.82.6.10 NMAC - Rp, 2.82.6.10 NMAC, 10/31/2017]

2.82.6.11 DETERMINATION OF DISABILITY:

A. The medical review authority shall, in its recommendation to the educational retirement board, report whether the applicant is or is not totally disabled to continue with his/her employment and unable to obtain and retain other gainful employment commensurate with his/her background, education and experience. In cases of recommended denials, reasons with sufficient detail shall also be provided.

B. When considering an applicant's background, education and experience, the guidelines established by the social security administration, vocational opinions, guides, books or reports and any other relevant information may be used.

C. If recommending disability benefits to the educational retirement board, the medical review authority or medical appeals hearing officer may, if appropriate, recommend that the applicant be referred to the division of vocational rehabilitation ("DVR") for its provision of available services to the disabled member. [2.82.6.11 NMAC - Rp, 2.82.6.11 NMAC, 10/31/2017]

2.82.6.12 CONTINUATION OF DISABILITY BENEFITS:

A. The requirements of Section 22-11-36 NMSA 1978 shall be met in the following manner:

(1) Each recipient of disability benefits shall be required to furnish a report from his/her personal physician or health care provider or report to an assigned medical examiner for examination at least once each year following approval of disability status. The frequency of examination (not less than once each year) shall be determined in each individual case by the medical review authority based upon the nature and extent of the disability. The director shall, in all cases, retain the authority to require an independent medical examination not called for by the medical review authority.

(2) Periodic examination reports on disability cases shall be studied by the medical review authority who shall make recommendations to the retirement board for consideration and action, and in no case shall a disability benefit be discontinued without the action of the retirement board.

B. If a member approved for disability is age 60 or more at the time of approval, or is receiving disability benefits when the member becomes age 60, the member shall be considered to have then retired by reason of age as provided in Section 22-11-38 NMSA 1978. At such time, the member may elect an optional benefit as provided in Section 22-11-29 NMSA 1978, regardless of number of years of earned service credit attained by the member.

C. Coincident with the annual medical report required of each member receiving disability benefits, the director shall obtain a report of the employment status of the disabled member which shall be considered along with the medical report in determining the member's continued eligibility.

D. In the event that a member receiving disability benefits from ERB is removed from a disability status by the board, disability payments shall continue to that member for a period of two full months following the month of removal, except if such member becomes employed before the expiration of this two-month period, the member shall be removed from the payroll on the date of employment. If the member removed from a disability status is eligible and opts for age/service retirement, disability payments shall terminate upon the effective retirement date, but in no case shall extend beyond the two-month period cited in this rule.

E. In making a recommendation following re-examination of a disability recipient, the medical review authority shall state whether there is or is not a substantial betterment of the member's disability. In the event a substantial betterment is concluded by the medical review authority, it shall further state whether, in light of that betterment, the member is or is not totally disabled for employment and unable to obtain and retain other gainful employment commensurate with his/her background, education and experience. In cases of recommended terminations of disability, reasons with sufficient detail shall also be provided. In the event that no substantial betterment can be concluded in any future re-examination, the medical review authority can recommend the recipient as permanently disabled.

F. A disability recipient who is no longer totally disabled for employment and is able to obtain and retain gainful employment commensurate with the recipient's background, education and experience, will be

determined not disabled, with consequent termination of benefits. In such cases, substantial betterment should be recommended by the medical review authority to the board. The board shall take action on such recommendation. A disability recipient who is totally disabled and unable to maintain and obtain employment commensurate with his/her background, education and experience may be determined permanently disabled without future re-examination. The permanent disability should be recommended by the medical review authority to the board, together with a statement that the recipient is permanently disabled. The board shall take action on such recommendation.

G. When considering a recipient's background, education and experience, the guidelines established by the social security administration, vocational opinions, guides, books or reports, reports from DVR and any other relevant information may be used.

H. A disability recipient shall furnish a list of all physicians who have examined or treated the recipient during the period of disability and provide copies of their reports and shall provide any other information requested by the educational retirement board, the medical review authority or the medical appeals hearing officer.

I. A disability recipient may review any and all evidence, physician reports, etc., which the medical review authority has which pertains to his/her case.

[2.82.6.12 NMAC - Rp, 2.82.6.12 NMAC, 10/31/2017]

2.82.6.13 APPROVAL OF APPLICATION: The director is authorized to approve duly executed applications for disability benefits on behalf of the board in order to insure timely approval of same if the medical review authority has determined that the applicant is disabled; however, all such approvals must be ratified by the educational retirement board at a subsequent meeting of the board. At the time of ratification, the director shall make available to the board, the reports of the medical examiners, the recommendations of the medical review authority, and the member's completed application along with such other information as the board may require.

[2.82.6.13 NMAC - Rp, 2.82.6.13 NMAC, 10/31/2017]

History OF 2.82.6 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

ERB 67-3, Rules and Procedures, filed 6/30/67.

ERB 78-1, Rules and Procedures, filed 8/7/78.

ERB Rule VI, Disability Benefits, filed 7/2/82.

History of Repealed Material:

2.82.6 NMAC, Disability Benefits, filed 6/30/99, repealed effective 10/31/2017 and replaced by 2.82.6 NMAC, Disability Benefits, effective 10/31/2017.