



State of New Jersey

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
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MEMORANDUM

November 16, 2006

To: All Judges and Attorneys

From: Peter J. Calderone, Director and Chief Judge 

Subject: Public Employee Pension Issues Affecting Workers' Compensation Awards

In consultation with the New Jersey Division of Pension and Benefits, which has reviewed this memorandum for consistency with Pension and Benefits policies, the following procedures apply for workers' compensation matters that involve public pension issues:

1. Ordinary Disability Pensions- With respect to Ordinary Disability Pensions, the public employer is presently entitled to the Rosales v. State of New Jersey, 373 N.J. Super. 29 (App. Div. 2004), certif. den., 182 N.J. 630 (2005), offset. In cases where the petitioner is receiving an ordinary disability pension and social security disability, the pension offset is first applied. After the pension offset is determined and the workers' compensation award accordingly reduced, any possible additional offset due to social security benefits is then calculated utilizing the pension offset reduced amount. For additional guidance on how to figure the pension offset and other related matters, please see Administrative Supervisory Judge Hickey's opinion on the Rosales remand to the workers' compensation court which can be found on the Division of Workers' Compensation website by first going to the Legal Resources section on the left side of the screen, subsection Decisions. The opinion can then be found as a reserve decision under the topic Permanent Total Disability.
2. Accidental Disability Pensions- With respect to Accidental Disability Pensions, the Division of Pension and Benefits is entitled to a dollar for dollar offset on the pension portion (not the annuity portion) of a pension award for worker's compensation benefits payable to a petitioner who is also receiving an Accidental Disability Pension. Any issues concerning the offset amount would be under the jurisdiction of the Division of Pension and Benefits and would not be re-viewable by the workers' compensation court. A worker has the right to pursue both an Accidental Disability Pension and a workers' compensation award. The Division of Pension and Benefits can supply the petitioner with a breakdown of the pension award.

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An N.J.S.A. 34:15-20 (Section 20) closure is not appropriate in such cases.

The worker and his or her attorney must review the individual's options with respect to the interplay between workers' compensation and the Accidental Disability Pension provisions considering, among other things, tax consequences, other pension options, medical coverage and survivor benefits. A petitioner in a pending workers' compensation case may as his or her choice:

- (a) Prosecute the workers' compensation case to settlement or judgment. It is noted that there is no pension offset against allowances charged to the petitioner.
- (b) Voluntarily dismiss the workers' compensation case, or
- (c) Accept a continuing medical coverage and/or monitoring settlement with no payment of workers' compensation cash benefits. In such situations the specific injuries for which continuing medical coverage and/or monitoring is being provided must be listed in the order. Additionally, it must be clear in the order that the agreed medical benefits are not subject to the two year limitations period to reopen a claim and such benefits continue for the life of the petitioner or until such further order of the court. Since there is no cash payment to the petitioner, it would be expected that any allowances would be the responsibility of the respondent in this type of closure.

Where a petitioner is receiving an Accidental Disability Pension, the settlement or judgment under (a) is to include a requirement that the petitioner provide the New Jersey Division of Pension and Benefits with a copy of the order or judgment within five (5) days of the entry of the order or judgment.

Note: This memorandum is included under liens section of the Continuing DWC Policies Manual for Judges.