

Initial Application for Disability Retirement

Instructions: Please print or type in dark ink. This form must be completed in its entirety and returned to PERA via regular mail, fax, or e-mail to PERA-Death&Disability@state.nm.us. Information regarding your disability application will not be released by PERA without your prior written consent.

Section 1

Information About You

Social Security Number or PERA ID	Name (First, Middle Initial, Last)

Date of Birth	Phone Number	E-mail Address	

Mailing Address	City	State	Zip Code

Height	Weight	Name of Spouse, if married	Spouse's Date of Birth

I am submitting an application for permanent disability retirement because I believe I am totally and permanently disabled. The nature of my illness injury condition is:

1) Is your illness, injury or condition a result of your job? Yes No

If yes, explain how:

2) The reason(s) I cannot work are:

Section 2

Information About Your Employer

Current or Last Employer

Mailing Address	City	State	Zip Code

Social Security Number

or

PERA ID

Section 3

Information About Your Current Employment and Education Status

Not Working

Termination/Resignation Date	Effective Date of Leave without Pay

Working

Full Time

Part Time

FMLA

On Leave (sick or annual)

Position or Job Title	

My job duties are:

(Attach a job description)

Work History (Include employers, job titles and dates beginning with the most recent:

(Attach copy of resume if necessary to provide complete educational or job history)

Educational Background (Check all that apply)

Grade School

Undergraduate

Degree _____

High School

Graduate

Degree _____

GED

Post Graduate

Degree _____

- -

Social Security Number

or

--

PERA ID

Section 4

Information About Your Disability

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Date of illness, injury or condition first occurred

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Diagnosis

Date of Diagnosis

List the names and addresses of all physicians, hospitals or clinics who have examined and/or treated you in the last three years. Indicate the illness, injury or condition for which you were treated. Please list the most current information first. (Attach an extra page if necessary.)

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Name

Location

Phone Number

--	--

Injury/Illness

Date Seen

		()
--	--	-----

Name

Location

Phone Number

--	--

Injury/Illness

Date Seen

		()
--	--	-----

Name

Location

Phone Number

--	--

Injury/Illness

Date Seen

		()
--	--	-----

Name

Location

Phone Number

--	--

Injury/Illness

Date Seen

		()
--	--	-----

Name

Location

Phone Number

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Injury/Illness

Date Seen

Social Security Number

or

PERA ID

3) Were you performing your regular duties at the time the disability occurred? Yes No

4) Do you consider this disability to have occurred as the natural and proximate result of causes arising solely and exclusively out of and in the course of your employment with an affiliated public employer?

Yes No

If so, why?

5) Have you sustained injuries in previous accidents or have you suffered illness or a condition of this nature on previous occasions?

Yes No

If yes, give complete details on a separate page explaining how, when, and where the accident or illness occurred, the nature and extent of the injury or illness, and by whom you were employed at the time.

6) Are you now or have you ever received compensation from the Veteran's Administration for injuries or illness which occurred while in the military service?

Yes No

If yes, give complete details on a separate page explaining how, when, and where the accident or illness occurred, and the nature and extent of the injury or illness.

7) Have you applied for Worker's Compensation? Yes No If yes, when did you apply? _____

Are you receiving monthly benefits? Yes No If yes, what is the amount of your benefits? _____

8) If you have applied and are receiving social security disability benefits, please send proof of the benefit. If you have applied but are not receiving benefits, what is the status of your application?

Section 5

Your Acknowledgement

By signature hereon, I declare that all information given is true and correct to the best of my knowledge and belief.

Signature of Applicant

Date

Authorization to Release Information

Instructions: Please print or type in dark ink. This form must be completed in its entirety and returned to PERA via regular mail, fax, or e-mail to PERA-Death&Disability@state.nm.us along with the Initial Application for Disability Retirement Benefits for processing.

I authorize the release of all records and information that PERA may request from any source for the purpose of PERA'S approved physicians to evaluate my disability application. I understand it is my responsibility to provide PERA all medical records pertaining to the disability claim and that PERA will not contact my doctor(s) to obtain my medical records.

This release includes but is not limited to records and information concerning my medical and/or psychological condition, my ability to work or be retrained, and other benefits and services for which I have applied or which I am receiving from agencies such as the Social Security Administration, Worker's Compensation, and the Department of Vocational Rehabilitation. For purposes of obtaining this information, a photocopy of this authorization is as valid as the original.

I understand this authorization will remain valid if I continue to receive a disability retirement benefit.

Section 1

Information About You

Social Security Number or PERA ID	Name (First, Middle Initial, Last)	
	()	
Date of Birth	Phone Number	E-mail Address
Signature of Member		Date

The member named above is applying for a PERA disability retirement. To be considered, the member must provide PERA with a complete medical and/or psychological history and a current doctor's narrative. Please provide a copy of all medical or psychological records relating to examinations or treatments relating to this applicant's claim for disability retirement. If available, include office notes, hospital history, physical history, discharge summary, and X-ray, pathology and consultation reports.

Section 2

Information About Your Notary

*Must be signed in the presence of a notary

State of _____)
) SS:
 County of _____)

Signed and sworn to (or affirmed) before me by _____ on this _____ day of _____
Applicant's Name (please print)

_____, _____

My Commission Expires _____

Notary Public Telephone Number _____ - _____ - _____

Signature of Notary _____

*Notary stamp must be visible

Employer's Report of Disability

Instructions: Please print or type in dark ink. This form must be completed in its entirety and returned to PERA via regular mail, fax, or e-mail to PERA-Death&Disability@state.nm.us.

Section 1

Information About the Member

The PERA member identified below is applying for PERA disability retirement benefits. This report must be completed by the claimant's employer. Please attach copies of all accident reports and worker's compensation reports (if applicable) filed with your agency relating to any injury or illness of the member. Please also provide a copy of the member's job description. Attach additional sheet(s) if necessary.

Social Security Number or PERA ID	Name of Claimant (First, Middle Initial, Last)

Current or Last Employer	Position or Job Title

Not Working

Termination/Resignation Date	Effective Date of Leave without Pay

Working

Full Time
 Part Time
 FMLA
 On Leave (sick or annual)

1) Is employee currently performing his/her regular job duties?

Yes
 No

If yes, what are the employee's regular job duties?

2) If no, have his/her job duties been modified?

Yes
 No

If yes, what are his/her current job duties?

3) Did the injury or illness occur during the course of the employee's performance of their regular job duties?
 Yes
 No

Date of Injury or Illness	

Social Security Number

or

PERA ID

4) Do you consider the injury or illness to have occurred as the natural and proximate result of causes arising solely and exclusively out of and in the course of his/her employment?

Yes No

If yes, why? _____

Date You Were First Informed of the Injury

5) Has the employee applied for Workers' Compensation? Yes No

If yes, when did he or she apply? _____

6) Has the employee been approved? Yes No

If yes, what is the amount of the benefits? _____

7) Did the employee receive a lump sum settlement? Yes No

If yes, what is the amount of the settlement? _____

8) Describe the status of the employee's Workers' Compensation claim:

Section 2

Employer Certification

Authorized Employer* Printed Name	Title	Email Address	()
			Phone

Signature of Authorized Employer*	Date
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*Human Resources Manager, Payroll Manager or Finance Manager

Examining Physician's Statement for Application for Disability Benefits

Instructions: Please print or type in dark ink. This form must be completed in its entirety and returned to PERA via regular mail, fax, or e-mail to PERA-Death&Disability@state.nm.us
ENTERING "SEE ATTACHED" IS NOT SUFFICIENT. A brief explanation MUST be on this form.

Section 1

Information About the Member

The PERA member identified below is applying for PERA disability retirement benefits. To be considered, PERA must receive a complete medical and/or psychological history or report. In addition, please provide a copy of all medical or psychological records relating to examinations or treatments relating to this claim for disability retirement, especially as they relate to the claimant's ability to work. If available, include office notes, laboratory test results, hospital history, physical history, discharge summary, ability to work and X- ray, pathology and consultation reports. The member is responsible for providing all medical documentation and this form to PERA.

Social Security Number or PERA ID	Name of Claimant (First, Middle Initial, Last)

Height	Weight	Date present illness, injury or condition began

1) A brief explanation of previous relevant history of illness, injury or condition:

2) A brief explanation of contributing causes to present illness, injury or condition, if any:

3) Do you consider this disability to have occurred as the result of causes arising, solely and exclusively out of and in the course of the claimant's employment?

Yes No

If yes, briefly explain why? _____

4) A brief explanation of symptoms:

- -

Social Security Number

or

PERA ID

5) A brief explanation of diagnosis:

6) A brief explanation of objective findings (attach copies of relevant test results):

7) A brief explanation of treatment plan and medications:

8) Describe the claimant's functional limitations (i.e. mobility, dexterity, attitude, etc as to employment and/or activities or daily living.)

9) Please attach any applicable reports referenced in #8 above. (i.e. functional capacity evaluation, PT notes, etc.)

10) A brief explanation of duration of restrictions:

- -
Social Security Number

or

PERA ID

11) Type of work claimant is presently capable of performing:

- No work
- Sedentary Work. May include lifting 10lbs and occasionally lifting or carrying such articles as docket, ledgers and small tools. Job is primarily done sitting, and only occasional walking and standing are required.
- Light work. May include lifting 20lbs. maximum, with frequent lifting and/or carrying objects weighing up to 10lbs. Job requires walking or standing to a significant degree or involves sitting most of the time with a degree of pushing or pulling of arm and leg controls.
- Medium work. May include lifting 50lbs. maximum with frequent lifting and/or carrying objects weighing up to 25 lbs.
- Heavy work. May include lifting 100lbs. maximum with frequent lifting and/or carrying objects weighing up to 50 lbs.
- Very heavy work. Lifting object in excess of 100lbs. with frequent lifting and/or carrying objects weighing 50 lbs. or more.
- Other (Describe): _____

12) Has the claimant reached maximum medical improvement? Yes No

When do you estimate the claimant will reach maximum medical improvement?

13) If claimant is not presently capable of performing any gainful employment, will claimant be able to return to some type of employment?

Yes No

If yes, approximate date and explain:

14) What permanent restrictions, if any, do you believe claimant will have?

New Mexico Statutes Annotated 1978

10-11-10.1 PUBLIC OFFICER AND EMPLOYEES

10-11-10.1. Disability retirement.

A. There is created a disability review committee of the retirement board. The disability review committee shall consist of at least three but not more than five retirement board members and at least one physician licensed in New Mexico appointed by the retirement board. The disability review committee shall review all applications for disability retirement, review reports required under this section and approve or deny applications for disability retirement.

B. The disability review committee may retire a member on account of disability before the time the member would otherwise be eligible for retirement if the following requirements are satisfied:

- (1) the member applying for disability retirement was a member at the time the disability was incurred;
- (2) a written application for disability retirement, in the form and containing the information prescribed by the association, has been filed with the association by the member or by the member's affiliated public employer;
- (3) employment is terminated within forty-five days of the date of approval of the application for disability retirement;
- (4) if:
 - (a) the member has five or more years of service credit; or
 - (b) the disability review committee finds the disability to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer;
- (5) the member submits to all medical examinations and tests and furnishes copies of all medical reports requested by the association or disability review committee provided that if the disability review committee requires independent medical or other examinations, those examinations shall be performed at the association's expense; and
- (6) the disability review committee makes the determination required under Subsection C of this section.

C. The disability review committee shall review applications for disability retirement to determine whether:

(1) if the member is a currently employed, contributing employee of an affiliated public employer:

(a) the member is mentally or physically totally incapacitated for continued employment with an affiliated public employer; and

(b) the incapacity is likely to be permanent; or

(2) if the member is not a currently employed, contributing employee of an affiliated public employer:

(a) the member is mentally or physically totally incapacitated for any gainful employment; and

(b) the incapacity is likely to be permanent.

D. The disability retirement pension shall be paid for a period of one year after approval of the initial application unless the disability review committee for good cause shown grants disability retirement for a longer period of time. After approval, payment shall be effective commencing the first of the month following submission of the initial application and termination of employment.

E. At the end of the first year that a disability retirement pension is paid, the disability retired member's condition shall be reevaluated to determine eligibility for continuation of payment of a disability retirement pension. If the disability retired member has applied for disability benefits under the federal social security program, he shall submit copies of his application. The association shall continue payment of the state disability retirement pension if the disability retired member presents a written final determination from the federal social security administration that the disability retired member qualifies, based on the same condition or conditions as presented in the application for a state disability retirement pension, for federal disability benefits.

F. If the disability retired member applied for federal disability benefits within thirty days of receiving approval for a state disability retirement pension but the federal social security administration has not made a written final determination of entitlement by the end of the first year that the disability retired member has received a state disability retirement pension, eligibility for continued payment of the state disability retirement pension shall be determined by the disability review committee. The state disability retirement pension shall be discontinued if the disability review committee finds that the disability retired member is capable of any gainful employment.

G. The disability retired member shall notify the association of the federal social security administration's final determination within fifteen working days of the date of issuance of the final written determination. If the federal social security administration denies federal disability benefits, the state disability retirement pension shall be discontinued effective the first of the month following the month in which the written final determination of the federal social security administration was issued. If the federal social security administration grants federal disability benefits, the state disability

retirement pension shall be continued, so long as the disability retired member provides annually, on or before the anniversary date of commencement of payment of the state disability retirement pension, written evidence of continuation of payment of federal disability benefits. If the disability review committee has denied continuation of payment of a state disability retirement pension, and the disability retired member is later granted federal disability benefits, the state disability retirement pension shall be reinstated effective the first of the month following the month in which the state disability retirement pension was discontinued.

H. If, at the time of reevaluation under Subsection E of this section, the disability retired member has applied for and has qualified for federal disability benefits, but for a different condition than was reviewed by the disability review committee, the disability review committee shall review the disability retired member's condition as described by the application for federal disability benefits. The process set forth in Subsection I of this section shall be followed to determine whether payment of a state disability retirement pension should be continued.

I. If the disability retired member is not eligible to apply for federal disability benefits or is not a member of the federal social security program, the disability review committee annually shall determine eligibility for continuation of payment of a state disability retirement pension. To make its determination of continued entitlement, the disability review committee shall use the guidelines established by the federal social security administration for determination of eligibility for federal disability benefits. The determination shall be based on:

- (1) the medical and all other information provided by the disability retired member;
- (2) at least one independent medical or other examination performed at the association's expense if required by the disability review committee; and
- (3) any and all medical, vocational or other information related to the disability compiled during the period of disability by any medical or other practitioner consulted by the disability retired member regarding the disability which was not paid for by the association.

J. Each disability retired member annually shall submit to the association, prior to July 1, a statement of earnings from gainful employment during the preceding calendar year. The statement of earnings shall be in the form prescribed by the association. Payment of the state disability retirement pension shall be discontinued if the amount of earnings from gainful employment is one hundred percent or more of the amount which causes a decrease or suspension of an old age benefit under the federal social security program, or fifteen thousand dollars (\$15,000), whichever is less. Payment of the state disability retirement pension shall be discontinued starting with the month of July if the statement of earnings is not received by the association prior to July 1.

K. Upon prior approval by the association, a disability retired member may return to employment with an affiliated public employer or other employer for a trial period not to

exceed one hundred twenty calendar days without becoming a member or causing suspension or discontinuation of payment of a state disability retirement pension. If the trial period of employment is successfully completed, payment of the disability retirement pension shall be discontinued beginning the first of the month following the one hundred twentieth day of the trial period of employment. Trial periods of employment shall be limited to two in any five-year period following disability retirement.

L. If the disability retired member meets the minimum age and service credit requirements for normal retirement while receiving a disability retirement pension, the disability retirement pension shall be reclassified by the association as a normal retirement pension, and no further determinations of eligibility for continuation of payment of the disability retirement pension shall be made. Upon reclassification as a normal retirement pension, all the provisions of this act regarding normal retirement shall be applicable.

M. If the disability review committee found the disability to be the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's employment with an affiliated public employer, service credit shall continue to accrue during the disability retirement period as though the disability retired member was actively employed.

N. The amount of a disability retirement pension shall be calculated according to the provisions of the coverage plan applicable to the member at the time of application, except that the service credit requirement shall be waived and the actual amount of service credit shall be used instead. If the disability is the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty for an affiliated public employer, the amount of disability retirement pension shall be calculated according to the provisions of the coverage plan applicable to the member, imputing the amount of service credit necessary to meet the minimum service credit requirements for normal retirement.

O. For the purposes of this section, the following definitions apply:

(1) "continued employment with the affiliated public employer" means the ability of the member to fulfill the required duties of the position in which the member was last employed by his affiliated public employer;

(2) "gainful employment" means remunerative employment or self-employment that is commensurate with the applicant's background, age, education, experience and any new skills or training the applicant may have acquired after terminating public employment or incurring the disability;

(3) "state disability retirement pension" means the pension paid pursuant to the provisions of this section; and

(4) "federal disability benefits" means those benefits paid by the federal social security program.

History: Laws 1998, ch. 160, § 3.

Return for "trial period". – A disability annuitant retired under the provisions of the Public Employees Retirement Act in effect before July 1, 1987, could return to employment for a "trial period" pursuant to Subsection D of former 10-11-11 NMSA 1978 (see now Subsection K). 1988 Op. Att'y Gen. No. 88-44.

Suspension of benefits when member capable of resuming gainful employment. – To construe Subsection C of former 10-11-11 NMSA 1978 (see now Subsection F) as requiring the retirement board to continue disability benefits to a member who is capable of engaging in gainful employment is wholly foreign to the statutory scheme governing disability benefits, would be a radical departure from former law, is inconsistent, and would amount to reading into the statute significant obligations against the association's funds that the legislature has not contemplated. 1990 Op. Att'y Gen. No. 90-09.

Rule adopted by the retirement board, providing for suspension of disability benefits if a member is capable of resuming gainful employment, was consistent with the statutory scheme governing the grant and continuation of disability benefits and was a reasonable implementation of Subsection C of former 10-11-11 NMSA 1978 (see now Subsection F). 1990 Op. Att'y Gen. No. 90-09.

"Commensurate" employment. – The board failed to comply with the requirements of this section in evaluating claimant's application for disability benefits, because it failed to factually determine whether the work he was able to perform was substantially "commensurate", in terms of remuneration with the work he was performing at the time of his disability or would have been capable of performing, absent the disability. *Johnson v. Public Employees Retirement Bd.*, 1998-NMCA-174, 126 N.M. 282, 968 P.2d 793.

Legislative intent, as to contributing service. – The five years of contributing service for each employee was placed in former 10-11-10 NMSA 1978 by the legislature, with the intent that it be a safeguard to protect the association and the board from retiring employees for nonduty disability when they enter the service of the state or any of its agencies, and who were already disabled and could work for the state or its agencies for a few weeks or months and then claim nonduty disability. 1955-56 Op. Att'y Gen. No. 6449.

Retroactive award prohibited. – The Public Employees Retirement Association may not award disability benefits retroactive to the date on which the member's name last appeared on the payroll with pay. 1989 Op. Att'y Gen. No. 89-18.

Am. Jur. 2d, A.L.R. and C.J.S. references. – Requiring submission to physical examination or test as violation of constitutional rights, 164 A.L.R. 967; 25 A.L.R.2d 1407.

Firemen: causal connection between firemen's performance of official duties and his disability, for purpose of recovering disability benefits, 27 A.L.R.2d 974.

Relationship between performance of official duties and subsequent disability or death, for purpose of pension or survivorship benefits of government employee other than fireman, policeman, or military personnel, 85 A.L.R.2d 1048.

Determination whether firefighter's disability is service-connected for disability pension purposes, 7 A.L.R.4th 799.

Determination whether peace officer's disability is service-connected for disability pension purposes, 12 A.L.R.4th 1158.

67 C.J.S. Officers and Public Employees § 248; 81A C.J.S. States §§ 46, 105, 112 to 119.

TITLE 2 PUBLIC FINANCE
CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT
PART 1000 DISABILITY RETIREMENT BENEFITS

2.80.1000.1 ISSUING AGENCY: Public Employees Retirement Association, P. O. Box 2123, Santa Fe, New Mexico 87504-2123
[10-15-97; 2.80.1000.1 NMAC – Rn, 2 NMAC 80.1000.1, 12-28-00]

2.80.1000.2 SCOPE: This rule affects the members, disability retirees, beneficiaries, affiliated public employers, the retirement board and the association under the Public Employees Retirement Act.
[10-15-97; 2.80.1000.2 NMAC – Rn, 2 NMAC 80.1000.2, 12-28-00; A, 9-30-03]

2.80.1000.3 STATUTORY AUTHORITY: NMSA 1978, Sections 10-11-10.1 and 10-11-130.
[10-15-97; 2.80.1000.3 NMAC – Rn, 2 NMAC 80.1000.3, 12-28-00]

2.80.1000.4 DURATION: Permanent.
[10-15-97; 2.80.1000.4 NMAC – Rn, 2 NMAC 80.1000.4, 12-28-00]

2.80.1000.5 EFFECTIVE DATE: December 15, 1995 unless a different date is cited at the end of a Section.
[10-15-97; 2.80.1000.5 NMAC – Rn & A, 2 NMAC 80.1000.5, 12-28-00]

2.80.1000.6 OBJECTIVE: The objectives of this rule are to define terms used in the disability retirement provision of the PERA Act; to set forth with particularity the membership of the committee; to clarify the compensation applicable to various members of the committee; to set forth procedures for initial disability retirement applications and for reevaluation of retirees' continued eligibility for disability payments; to provide a procedure for trial employment; and to provide for notice to retirees of pension reclassifications. The intent of the Board in promulgating these rules is to encourage continued employment of members while providing protection in cases of disability. Vocational rehabilitation is strongly recommended in every case possible.
[10-15-97; 2.80.1000.6 NMAC – Rn, 2 NMAC 80.1000.6, 12-28-00]

2.80.1000.7 DEFINITIONS: For purposes of disability retirement the following definitions shall apply:

A. "Commensurate" employment means that the applicant is able to engage in some profitable employment or enterprise in the state of New Mexico, which approximates to a substantial degree the applicant's pre-injury compensation but is not necessarily equal to the applicant's pre-injury employment.

B. "Course of the member's performance of duty" means place or activity for which the employer's business requires the presence of the employee, but shall not include travel or time on the way to assume the duties of employment or travel or time leaving such duties, except when the employee is temporarily assigned to a destination other than his or her normal work station or is within the "special errand" rule, in which case such time will be considered to be in the course of employment. Mere presence on the employer's premises while coming to or going from the job shall not establish this element unless the member has also assumed or is performing job duties.

C. "Likely to be permanent" means that the weight of the medical evidence presented indicates that the applicant has either reached maximum medical improvement and the disability will probably

last at least until the applicant reaches the age at which he or she will become eligible for normal retirement or that the medical information supports a determination of permanent disability, even though maximum medical improvement has not been reached.

D. "Solely and exclusively" means the member's work is so substantial a factor of the disability that the disability would not have occurred at the time without it and a pre-existing condition is not a significant contributing factor material to the disability.

E. "Totally incapacitated" means inability, as a result of either sudden injury or illness or the cumulative long-term effects of injury or illness, to work the member's regular work week.

[10-15-97; 1-15-99; 2.80.1000.7 NMAC – Rn, 2 NMAC 80.1000.7, 12-28-00; A, 8-15-01; A, 9-30-03]

2.80.1000.8-19 [Reserved]

2.80.1000.20 DISABILITY REVIEW COMMITTEE

A. The disability review committee shall consist of at least one physician licensed in New Mexico and at least three, but not more than five members of the board; the physician need not be either a board member or association member, but may be either or both. The committee may also engage a psychologist (Ph.D.) or a psychiatrist (M.D.) licensed in New Mexico to serve on an as-needed basis to evaluate and advise the committee regarding applications for disability retirement based in whole or in part on mental incapacity.

B. The executive director or designated representative shall act as secretary for the committee.

C. Compensation: Members of the committee shall receive no compensation other than that authorized by the Per Diem and Mileage Act, except that physicians, psychiatrists or psychologists who are not board or association members and are engaged by the board to serve on the committee may be compensated at the rate established by the board.

[10-15-97; 11-15-97; 2.80.1000.20 NMAC – Rn, 2 NMAC 80.1000.20, 12-28-00; A, 8-15-01]

2.80.1000.21-29 [Reserved]

2.80.1000.30 INITIAL APPLICATION PROCEDURE

A. Application. The association shall provide application forms for members to use in complying with these provisions. No member shall be deemed an applicant for disability retirement until the member or his or her representative or employer has completed and filed the disability application package, including all the forms required in order to process the application. The following forms shall be required in order to process the application:

(1) Employer's report of disability (not applicable to members who are not currently employed contributing members). If the employer refuses to provide the report, the committee may take whatever steps it deems necessary to obtain the required information.

(2) Member's examining physician's statement for disability retirement benefits. If the application is for disability retirement based on physical incapacity, the examining physician must be a medical doctor (M.D.) licensed in the state in which he or she practices. If the application is for disability retirement based on mental incapacity, the examining physician must be either a psychologist (Ph.D.) certified in the state in which he or she practices or psychiatrist (M.D.) licensed in the state in which he or she practices. If the application is for disability retirement based on both physical and mental incapacity, reports must be made for each kind of incapacity. The examining physician's statements shall be based on an

examination of the member not more than 3 months prior to the date of submitting the application.

(3) Employer's first report of injury, if any. (4) A list of all health care practitioners consulted who have examined or treated the member regarding the disability and all records, reports, narratives, evaluations, diagnoses, prognoses or notes discussing, establishing, evaluating or measuring the disability. Such records shall include, but not be limited to, one or more reports, evaluations, analyses or narratives made within ninety (90) days of application.

(5) Copies of any and all vocational rehabilitation reports and work performance evaluation reports made since the disability was incurred.

(6) Release of medical information to PERA on a form signed by the applicant or his or her legal representative.

(7) Any other information requested by members of the committee.

B. If information requested by members of the committee is not provided by the disability applicant within sixty (60) days of the written request, the application, if otherwise complete, will be considered by the committee in the absence of the requested information and the applicant's failure to provide the requested information may be considered by the committee in its consideration of the application.

C. Notification: The applicant shall be given notice of every meeting at which his or her application is to be considered. Such notice shall be in writing and mailed not less than five days prior to such disability review committee meeting, unless the applicant waives, in writing, the notification requirement in order to expedite any action on his or her application.

D. Meetings: The committee shall hold its regular meetings at designated times at the PERA building, Santa Fe, New Mexico. A majority of the committee members, at least one of whom must be a physician, shall constitute a quorum. No action may be taken by the committee in the absence of a quorum.

(1) Confidentiality: Meetings of the committee shall not be open to the public in order to preserve the confidentiality of medical records pursuant to NMSA 1978, Section 14-2-1. The applicant and the applicant's guest(s) or representative may be present to hear discussion and to address the committee during consideration of his or her application.

(2) Testimony and oral statements or arguments made by an applicant or his or her representative shall be tape recorded.

E. Release of medical reports: Copies of medical reports may be given to the applicant or his or her representative, provided a release of information form is signed by the applicant or his or her legal representative.

F. Examination: Upon receipt and consideration of the completed disability retirement forms required in 30.A above, the committee may notify the applicant in writing if further examination is necessary, and if so, the type of examination and information necessary to document the disability application. If, after the applicant has been notified in writing, the applicant fails without good cause to report to an examining physician within 90 days, his or her application for disability retirement benefits shall become void.

G. The committee shall determine whether the applicant meets the requirements for disability retirement, and approve or deny the application. The applicant shall be notified by letter of the committee's action within 10 working days of its meeting. If the application is approved, the type (duty

or non-duty) of the retirement pension and the effective date shall be submitted to the board for ratification at the next regular meeting following the effective date of retirement.

H. If the application for disability retirement is approved, the member, unless excluded from coverage by the federal social security administration, shall apply for federal disability benefits within 30 calendar days of approval of the application for disability retirement. A copy of the federal social security administration application shall be submitted to PERA.

I. If an application for disability retirement benefits is approved and the member does not terminate employment within 45 calendar days, a new application must be filed and approved by the committee before a disability retirement pension can be paid.

J. If an application for disability retirement benefits is denied, and the applicant either fails to appeal or appeals and the denial is upheld on appeal, the applicant may re-apply and present new medical evidence in support of a new application for disability retirement benefits based on the same disorder one year after the date of the initial denial. The applicant may not re-apply for disability benefits for the same medical condition without new medical evidence made within ninety (90) days of the re-application.

[10-15-97; 11-15-97; 1-15-99; 12-15-99; 2.80.1000.30 NMAC – Rn, 2 NMAC 80.1000.30, 12-28-00; A, 8-15-01;A, 9-30-03]

2.80.1000.31-39 [Reserved]

2.80.1000.40 APPEAL: If the committee denies disability retirement benefits, the applicant may appeal the action. Any appeals under this section shall be conducted according to NMSA 1978, Section 10-11-120 and 2.80.1500 NMAC.

[10-15-97; 2.80.1000.40 NMAC – Rn, 2 NMAC 80.1000.40, 12-28-00]

2.80.1000.41-49 [Reserved]

2.80.1000.50 CONTINUATION PROCEDURE

A. At the end of the first year that a disability retirement pension is paid, the disability retired member's condition shall be reevaluated to determine eligibility for continuation of payment of a disability retirement pension.

B. The disability retired member must submit a copy of the application for benefits with the federal social security administration and written evidence of payment of federal disability benefits in the following form: 1) a copy of a warrant for federal disability benefits; or 2) a letter from the federal social security administration confirming that the disability retired member is receiving federal disability benefits.

C. If the disability retired member has not applied for federal disability benefits, has applied and has not received a written final determination, or has received federal social security disability for a different condition than presented in the application for PERA disability, the committee shall determine the disability retired member's eligibility for continuation of payment of a state disability retirement pension. The following forms and information are required for re-evaluation for continuation of disability retirement benefits:

(1) Examining physician's statement for continuation of disability retirement pension. If disability retirement was granted based on mental incapacity, the examining physician must be either a psychologist (Ph.D.) certified in the state in which he or she practices or psychiatrist (M.D.) licensed in the state in which he or she practices. If the disability

retirement was granted based on both physical and mental incapacity, reports must be made for each kind of incapacity by the appropriate health care professionals. The examining physician's statements shall be based on an examination of the disability retired member not more than 3 months prior to the date of consideration of the re-evaluation;

(2) Disability retired member's statement for continuation of disability retirement pension;

(3) A list of all health care practitioners consulted who have examined or treated the disability retired member regarding the disability;

(4) Copies of any and all vocational rehabilitation reports and work performance evaluation reports made since the disability was incurred. At re-evaluation for continuation of disability retirement benefits, at least one vocational rehabilitation report by a vocational rehabilitation evaluator approved by PERA must be submitted to the committee. In addition to any other vocational rehabilitation reports, if the disability retired member was referred by PERA to the division of vocational rehabilitation ("DVR") at the time of initial approval of disability retirement benefits, a report from DVR must be submitted at re-evaluation.

(5) Any other information requested by the committee.

D. Disability retired members whose examination reports are under consideration by the committee have the right to be heard by and to present any pertinent evidence which they may have to the committee. They may also review any and all evidence that the committee may have which pertains to their case.

E. Appeals of denial of continuation of disability retirement pensions by members who are not covered by or who are not eligible to apply for federal disability benefits shall be conducted according to NMSA 1978, Section 10-11-120 and 2.80.1500 NMAC.

F. If the disability retired member fails to appeal as provided herein the committee's decision becomes final.

G. If continuation of disability retirement benefits is denied, and the applicant either fails to appeal or appeals and the denial is upheld on appeal, the applicant may not re-apply for disability retirement benefits based on the same condition(s) for at least one year after the initial denial of continuation of disability retirement benefits.

[10-15-97; 1-15-99; 2.80.1000.50 NMAC – Rn, 2 NMAC 80.1000.50, 12-28-00; A, 9-30-03]

2.80.1000.51-59 [Reserved]

2.80.1000.60 TRIAL EMPLOYMENT

A. A disability retired member who desires to return to employment for a trial period of not more than 120 calendar days shall first request, in writing, approval from the association not less than 30 days before the first day of work. The request for approval shall contain the following information:

(1) name, address, and telephone number of the proposed employer;

(2) job title;

(3) salary;

(4) trial employment start date.

B. If the disability retired member successfully completes a trial period of employment with an affiliated public employer, the disability retired member shall be reinstated as a PERA member and resume contributions to PERA.

[10-15-97; 1-15-99; 2.80.1000.60 NMAC – Rn, 2 NMAC 80.1000.60, 12-28-00]

2.80.1000.61-69 [Reserved]

2.80.1000.70 EARNINGS FROM EMPLOYMENT

A. If the amount earned from any employment is \$15,000 or more, disability benefits shall be suspended immediately and any amounts paid after that limit is reached must be reimbursed by the retiree to PERA.

B. PERA shall require all disability retired members to provide a statement of earnings from any employment during the preceding calendar year. Such statement of earnings shall include the internal revenue service tax return or other proof of earnings, acceptable to PERA, if an IRS tax return does not exist.

[10-15-99; 1-15-99; 2.80.1000.70 NMAC – Rn & A, 2 NMAC 80.1000.70, 12-28-00]

2.80.1000.71-79 [Reserved]

2.80.1000.80 PENSION RECLASSIFICATION: When a disability retired member reaches the combined age and years of service that qualifies a member for normal retirement benefits under the coverage plan under which the disability retired member was last employed before receiving disability retirement benefits, PERA shall reclassify that person's pension from disability to normal retirement. The disability retired member shall be notified in writing by PERA of this action within 30 days of reclassification.

[10-15-97, 1-15-99; 2.80.1000.80 NMAC – Rn, 2 NMAC 80.1000.80, 12-28-00]

HISTORY of 2.80.1000 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Center & Archives under: Rule 1000.00, Disability Benefits, filed on 10-4-79; PERA Rule 1000.00, Disability Benefits, filed on 11-19-81; PERA Rule 1000.00, Disability Benefits, filed on 11-23-82; PERA Rule 1000.00, Disability Benefits, filed on 7-1-87; PERA Rule 1000, Disability Benefits, filed on 10-21-88; PERA Rule 1000, Disability Benefits, filed on 7-10-90; PERA Rule 1000, Disability Benefits, filed on 7-1-91; PERA Rule 1000, Disability Retirement Benefits, filed on 7-1-93; PERA Rule 1000, Disability Retirement Benefits, filed on 12-1-95.

History of Repealed Material:

2 NMAC 80.1000, Paragraph 60.2 – Repealed 1-15-99