



September 27, 2023

Non-duty to Duty Disability Conversions

INITIAL CONSIDERATION

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ISSUE STATEMENT

The criteria for duty disabilities changed over time, as a result there may be LEOFF 2 members who were approved for non-duty disability with conditions that would qualify as duty related if the injury occurred today.

OVERVIEW

Since the creation of the LEOFF 2 duty disability benefit what is considered a workplace injury or occupational disease has broadened. Because these changes were not retroactive, this has created a situation where it is possible that two members suffering from the same disabling condition caused by the workplace events, qualify for different LEOFF 2 benefits.

BACKGROUND AND POLICY ISSUES

In 2018 SB 6214, *Allowing industrial insurance coverage for PTSD of law enforcement and firefighters*, was enacted into law. In addition to making PTSD a presumptive disease for LEOFF members, this law also allowed for claims resulting from repeated exposure to qualify for PTSD. Prior to the passage of this law PTSD claims were required to be caused by a single workplace event. The PTSD would not be considered occupational if directly attributed to disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by an employer. The bill also states that to be considered presumptive, the PTSD has to have developed or manifested after the employee has served at least 10 years.

This change in LNI law also resulted in a change to pension benefits. LEOFF 2 members who suffered from PTSD because of multiple workplace exposures were now eligible for duty disability benefits, instead of only non-duty disability benefits. Non-duty disability benefits allow for a member to retire early but require the member to take an actuarially reduced benefit based on the number of years they are retiring early. A duty disability benefit allows the member to retire early with out taking a reduction in their benefit.

During the 2023 legislative session SB 5625, *Concerning public employee retirees*, was proposed but failed to pass. This bill sought to address multiple concerns related to the administration of pension benefits, including requiring DRS to review past duty disability denials and determine if the disability was incurred “in the line of duty”. This section of this bill sought to address this concern regarding PTSD claims that had been denied for duty based on the previous definition of “in the line of duty”.

The Department of Retirement System identified that there have been 64 LEOFF 2 members approved for non-duty disability benefits. 56 of those members were approved prior to June 7, 2018, the effective date of SB 6214. The Department’s data systems do not track detailed information about the disabling condition of these non-duty disability members. Therefore, a review of the records would be required to identify how many of these 56 members would need to be reviewed to determine the potential financial impacts of a change in the law allowing these members to be eligible to have their benefit converted to duty disability.



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Issue

- The criteria for duty disabilities has changed over time, as a result there may be LEOFF 2 members who were approved for non-duty disability with conditions that would qualify as duty related if the injury occurred today

Example - Hypothetical

- Prior to 2018 a LEOFF 2 member makes a claim of PTSD from multiple exposures as the cause of their injury
- DRS agrees the member has a disabling condition preventing them continuing to work as a firefighter. However, the injury was not caused by a single event and therefore the injury is not duty related and the member is approved for non-duty instead of duty disability
- Should the law be changed to allow for members who retired prior to 2018 and who were approved for non-duty disability to be eligible for duty disability in scenarios like the one above?

Legislative History

- **SB 5615 (2005) – Created Duty Disability Benefit for LEOFF 2**
- **HB 2932 (2006) – Created Catastrophic Disability Benefit for LEOFF 2**
- **SB 6214 (2018) – Allowed industrial insurance coverage for PTSD of law enforcement and firefighters**
 - Allowed for claims resulting from repeated exposure
 - Established PTSD as a presumptive disease for LEOFF members
- **SB 5625 (2023) - DRS Ombuds Bill (Did not pass legislature)**
 - DRS must review past duty disability denials and determine if the disability was incurred “in the line of duty”

Presumptive Occupational Diseases

- A condition being identified under LNI law as a presumptive diseases makes it easier for a LEOFF member to qualify for a duty disability benefit
- The list of conditions that qualify as presumptive diseases continues to change
 - Includes various types of cancers, heart and respiratory diseases, certain infectious diseases, and PTSD
 - Not the exact same list for FF and LEO
 - Process for conditions to be added to presumptive disease list
- Different issue than a condition not qualifying as duty related

DRS Data

- 56 LEOFF 2 non-duty disability retirees prior to effective date of PTSD law
- Working with DRS to determine how many of those were approved for PTSD, or similar condition, prior to the 2018 law being effective

Next Steps

1. Motion to receive comprehensive briefing
2. No action



Thank You

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