WEST VIRGINIA CODE: §15-2A-9

§15-2A-9. Awards and benefits for disability – Incurred in performance of duty.

(a) Any employee of the agency who has not yet entered retirement status on the basis of age and service and who becomes partially disabled by injury, illness, or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of employees of the agency or incurred pursuant to or while the employee was engaged in the performance of his or her duties as an employee of the agency shall, if, in the opinion of the board based on a medical examination, he or she is, by reason of that cause, unable to perform adequately the duties required of him or her as an employee of the agency, but is able to engage in other gainful employment in a field other than law enforcement, be retired from active service by the board. The retirant thereafter is entitled to receive annually from the fund in equal monthly installments during his or her lifetime, or until the retirant attains the age of 55 or until the disability eligibility sooner terminates, one or the other of two amounts, whichever is greater:

(1) An amount equal to six tenths of the base salary received in the preceding 12-month employment period: *Provided*, That if the member had not been employed with the agency for 12 months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or

(2) The sum of $6,000. The first day of the month following the date in which the retirant attains age 55, the retirant shall receive the benefit provided in section six of this article as it would apply to his or her final average salary based on earnings from the agency through the day immediately preceding his or her disability. The recalculation of benefit upon a retirant attaining age 55 shall be considered to be a retirement under the provisions of section six of this article for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article: *Provided*, That a retirant who is partially disabled under this article may not, while in receipt of benefits for partial disability, be employed as a law-enforcement officer: *Provided, however*, That a retirant on a partial disability under this article may serve as an elected sheriff or appointed chief of police in the state without a loss of disability retirement benefits as long as the elected or appointed position is shown, to the satisfaction of the board, to require the performance of administrative duties and functions only, as opposed to the full range of duties of a law-enforcement officer.

(b) If, in the opinion of the board based on a medical examination, any member who has not yet entered retirement status on the basis of age and service, and who becomes physically or mentally disabled by injury, illness, or disease on a probable permanent basis resulting from any occupational risk or hazard inherent in or peculiar to the services required of employees of the agency or incurred pursuant to or while the employee was or is engaged in the performance of his or her duties as an employee of the agency to the extent that the employee is incapacitated ever to engage in any gainful employment, the employee is

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entitled to receive annually, and there shall be paid from the fund in equal monthly installments during his or her lifetime or until the disability sooner terminates, an amount equal to the base salary received by the employee in the preceding full 12-month employment period. Until a member has worked 12 months, the amount of monthly base salary shall be annualized for the purpose of determining the benefit.

(c) Disability benefit payments made pursuant to subsection (a) or (b) of this section will begin the first day of the month following board approval and termination of employment or as ordered by a court of competent jurisdiction.

(d) The superintendent of the agency may expend moneys from funds appropriated for the agency in payment of medical, surgical, laboratory, x-ray, hospital, ambulance and dental expenses and fees and reasonable costs and expenses incurred in the purchase of artificial limbs and other approved appliances which may be reasonably necessary for any retirant who is temporarily, permanently or totally disabled by injury, illness, or disease resulting from any occupational risk or hazard inherent in or peculiar to the service required of employees of the agency or incurred pursuant to or while the employee was or shall be engaged in the performance of duties as an employee of the agency. Whenever the superintendent determines that any disabled retirant is ineligible to receive any of the benefits in this section at public expense, the superintendent shall, at the request of the disabled retirant, refer the matter to the board for hearing and final decision. In no case will the compensation rendered to health care providers for medical and hospital services exceed the then current rate schedule approved by the West Virginia Insurance Commission. Upon termination of employment and receipt of properly executed forms from the agency and the member, the board shall process the member’s disability retirement benefit and commence annuity payments as soon as administratively feasible.

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