

94-411 MAINE ~~STATE-PUBLIC EMPLOYEES~~ RETIREMENT SYSTEM

Chapter 509: DETERMINATION OF ~~INABILITY~~~~IMPOSSIBILITY~~ TO PERFORM THE ESSENTIAL DUTIES OF THE EMPLOYMENT POSITION

Summary: The purpose of this rule is to specify the standard and definitions to be applied under 5 MRSA §§~~17901~~, 17921, ~~18501~~ and 18521 in determining whether ~~it is impossible for~~ a disability applicant is unable to perform the duties of the employment position with reasonable accomodation.

§1.SECTION 1. Standard and Related Definitions.

A disability benefit applicant must meet certain statutory requirements under 5 MRSA §§~~17901~~, 17921, ~~18501~~ and 18521 in order to be eligible to receive disability retirement benefits. One of these requirements is that the applicant must demonstrate that ~~it is "impossible" for~~ the applicant is unable to perform the essential duties of the employment position with reasonable accomodation." The following standard and definitions govern the determination of whether this requirement is met~~impossibility to perform the duties of the employment position~~.

A1. A member shall not be considered incapacitated ~~such that it is impossible to perform the duties of the employment position~~ if the employer agrees to make job modifications as defined below that will enable the member to perform the duties of the employment position.

4A. For these purposes, "job modification" means a change or changes to the member's work situation that alters any aspect(s) that, because of the member's physical or mental incapacity, inhibit ability to perform the duties of the employment position. "Job modification" includes but is not limited to modification in the job tasks or duties, change in the way a particular task or duty is carried out, change to the physical environment, provision of adaptive equipment, and change in the job conditions.

2B. "Employment position" means the position in which the member is employed at the time the member becomes incapacitated or this position as modified by the member's employer in accordance with (1) above, or a position that is made available to the member by the member's employer that is of comparable stature and equal or greater compensation and benefits to the position in which the member is employed at the time the member becomes incapacitated and whose location is of a reasonable commuting distance and does not require the member to relocate ~~his or her~~their residence.

§2SECTION 2. Application of Standard

- A1. The member who is an applicant for disability retirement benefits has the ultimate burden of demonstrating ~~inability that it is impossible~~ to perform the essential duties of the employment position with reasonable accomodation.
- B2. When a determination is made by the System that job modification would enable the member to perform the duties of the employment position, the System has the initial burden to determine generally the job modifications that would enable the member to perform the duties of the employment position. This will be communicated in writing to the applicant and the applicant's employer prior to or at the time that a decision on eligibility for disability retirement benefits is made. If the member disputes the determination, the member then has the burden to demonstrate either that the member has requested the employer to provide the job modifications determined by the System and that the employer has refused to make these job modifications or that the modifications identified by the System would not allow the member to perform the duties of the employment position.
- C3. In the event that the employer refuses to make the requested modifications, a member must also demonstrate that ~~he or she has~~they have requested the employer to provide a position that the member's disability does not prevent ~~him or her~~them from performing and that is of comparable stature and equal or greater compensation and benefits to the member's employment position at the time the incapacity arose and that the employer has refused to offer such a position.

~~§3. Applicability~~

~~Any party in an appeal pending before the Board in which a pre-hearing conference has not yet been held by a hearing officer on the date this rule goes into effect and in which the System has taken the position that job modification would enable the person to perform the duties of the employment position may have an opportunity to put in additional evidence before the hearing officer on this issue.~~

AUTHORITY: 5 MRSA §§ ~~17901~~ 17103(4), 17921, ~~18501~~ and 18521

EFFECTIVE DATE: June 7, 1997