

CHARLOTTE FIREFIGHTERS' RETIREMENT SYSTEM DISABILITY REGULATION
(Approved by Charlotte City Council on June 8, 2015 and effective July 1, 2015)

SECTION 1 - GENERAL

This regulation shall set forth the rules for the administration of any "Application for Disability Retirement in the Line of Duty" or any "Application for Disability Retirement not in the Line of Duty" filed pursuant to the provisions of Section 19 or Section 20, respectively, of the Charlotte Firefighters' Retirement System (CFRS) Act.

SECTION 2 - DEFINITIONS

- A. Disability when used herein shall mean partial disability, temporary disability, total disability or total and permanent disability as defined herein. Disability shall not include the following:
- (1) Injuries, accidents and/or diseases resulting from or attributed to gross negligence of a Member;
 - (2) Occupational injuries, accidents and/or diseases resulting from or attributed to a Member's habitual failure to follow Charlotte Fire Department (CFD) Operational and/or Safety procedures; habitual failure is defined as 4 offenses in the 5 years prior to the debilitating incident;
 - (3) Injuries, accidents and/or diseases resulting from and/or attributed to a Member's participation in war, declared or undeclared, or any act of war. Notwithstanding the foregoing, disability includes (i) injuries, accidents, and/or diseases resulting from and/or attributed to Members serving active duty with the United States military or its reserves, or (ii) Members who in the course of normal work duties and responsibilities respond to emergency calls resulting from any act of war.
 - (4) Injuries, accidents and/or diseases resulting from and/or attributed to a Member's active participation in a riot;
 - (5) Injuries, accidents and/or diseases resulting from and/or attributed to a Member's intentionally self-inflicted injuries; or
 - (6) Injuries, accidents and/or diseases resulting from and/or attributed to a Member's participation in committing or attempting to commit a felony.
- B. Partial disability means that a Member is unable to perform the substantial and material duties of his or her classification in the Charlotte Fire Department, but is able to engage in other gainful occupation in which he or she might reasonably be expected to engage, with due regard to his or her education, training and/or experience.
- C. Temporary disability means that a Member is unable to perform the substantial and material duties of his or her classification in the Charlotte Fire Department. The temporary disability determination is intended to be the original finding of disability with a subsequent reexamination of the Retiree.
- D. Total Disability means that a Member is unable to engage in any gainful occupation (including duties of previous classification) in which he or she might reasonably be expected to engage, with due regard to his or her education, training and/or experience.
- E. Total and permanent disability means that a Member is unable to perform the substantial and material duties of any classification in the Charlotte Fire Department.

SECTION 3 - DISABILITY RETIREMENT

- A. A Member who has applied for disability retirement in the line of duty pursuant to the provisions of Section 19 of the CFRS Act, and:
- (1) was employed by the Charlotte Fire Department prior to February 26, 1990, may be retired by the Board of Trustees as totally and permanently disabled or incapacitated for duty in the employ of the Charlotte Fire Department by reason of an injury, accident or occupational disease arising out of and in the course of his or her actual performance of duty in employment with the Charlotte Fire Department provided that after a medical examination of the Member, by or under the direction of the Medical Board, the Medical Board certifies to the Board in writing that the Member is totally and permanently disabled or incapacitated for duty in the employ of the Charlotte Fire Department by reason of an injury, accident or occupational disease.
 - (2) was employed by the Charlotte Fire Department on or after February 26, 1990, may be retired as temporarily disabled as defined in Section 2 of this regulation, for duty with the Charlotte Fire Department in his or her classification by reason of an occupational injury, accident or disease arising out of and in the course of his or her actual performance of duty in employment with the Charlotte Fire Department. The Administrator shall arrange for a medical examination of the Member, by or under the direction of the Medical Board (CFRS Act, Section 36(c)). After such medical examination of the Member, the Medical Board shall certify to the Administrator in writing that the Member is or is not temporarily disabled for duty with the Charlotte Fire Department in his or her classification by reason of an injury, accident or disease.
- B. A Member who has applied for disability retirement not in the line of duty pursuant to Section 20 of the CFRS Act, and:
- (1) was employed by the Charlotte Fire Department prior to February 26, 1980, may be retired by the Board of Trustees as totally and permanently disabled or incapacitated for duty in the employ of the Charlotte Fire Department by reason of injury, accident or disease that did not arise out of and in the course of his or her actual performance of duty in employment with the Charlotte Fire Department provided that after a medical examination of the Member, by or under the direction of the Medical Board, the Medical Board certifies to the Board in writing that the Member is totally and permanently disabled or incapacitated for duty in the employ of the Charlotte Fire Department by reason of an injury, accident or disease.
 - (2) was employed by the Charlotte Fire Department on or after February 26, 1980 may be retired as temporarily disabled as defined in Section 2 of this regulation, for duty with the Charlotte Fire Department in his or her classification by reason of an injury, accident or disease that did not arise out of and in the course of his or her actual performance of duty in employment with the Charlotte Fire Department. The Administrator shall arrange for a medical examination of the Member, by or under the direction of the Medical Board. After such medical examination of the Member, the Medical Board shall certify to the Administrator in writing that the Member is or is not temporarily disabled for duty with the Charlotte Fire Department in his or her classification by reason of an injury, accident or disease.
- C. Within fourteen (14) days of the receipt of a medical report from the Medical Board as specified in subdivision A or B of this section, the Administrator shall mail a copy of such medical report to the Member. Within ten (10) days of the mailing of such medical report to the Member, the Administrator shall request the Board of Trustees to conduct a Board Hearing pursuant to the provisions of Section 6 of this regulation. Such request for a Board Hearing shall be filed with the Chairman of the Board.

- D. Upon the request of the Administrator, or the Member, a member of the Medical Board, preferably the examining physician on the application, shall appear at the Board Hearing to respond to any questions of a medical nature or to render any medical opinion necessary to clarify the medical report.
- E. The determination by the Board of Trustees that a Member is not entitled to disability retirement benefits under this section shall not prohibit such Member from filing another "Application for Disability Retirement in the Line of Duty" or "Application for Disability Retirement not in the Line of Duty" at a later date, provided the application is based on additional or different facts bearing on the question of his disability.

SECTION 4- REEXAMINATION

- A. The Administrator may arrange for a Retiree who was temporarily retired pursuant to Section 19 or Section 20 of the CFRS Act and Section 3(A)(2) or Section 3(B)(2) of this regulation to be reexamined between six months and three years after his or her retirement became effective. After this initial medical reexamination of the Retiree, by or under the direction of the Medical Board, the Medical Board shall certify to the Administrator in writing that the Retiree is no longer temporarily disabled for duty in the employ of the Charlotte Fire Department and:
 - (1) the medical condition for which the Retiree was retired no longer exists and the retiree is capable of reinstatement to his or her classification with the Charlotte Fire Department; or
 - (2) is partially disabled as defined in Section 2 of this regulation, for duty in his or her classification with the Charlotte Fire Department, is capable of other gainful employment, and is rated as 10% to 80% (actual percentage) disabled; or
 - (3) is totally disabled as defined in Section 2 of this regulation, for any gainful employment.
- B. After the initial medical reexamination of any Retiree pursuant to subdivision A of this Section, the Administrator shall have the authority and may require such Retiree who has not attained the age and Membership Service Credit to meet the requirements for a service retirement as specified in Section 15 of the CFRS Act to undergo a medical reexamination at anytime not to exceed one reexamination per year, by or under the direction of the Medical Board. After such medical examination, the Medical Board shall certify to the Administrator in writing that:
 - (1) the medical condition for which the Retiree was retired no longer exists and the Retiree is capable of reinstatement to his or her classification with the Charlotte Fire Department; or
 - (2) the medical condition for which the Retiree was retired still exists, but has improved sufficiently to warrant a change to partially disabled, as defined in Section 2 of this regulation, is capable of other gainful employment, and is rated as 10% to 80% (actual percentage) disabled; or
 - (3) the medical condition for which the Retiree was retired still exists, but has deteriorated sufficiently to warrant a change to partially disabled as defined in Section 2 of this regulation, is capable of other gainful employment, and is rated as 10% to 80% (actual percentage) disabled; or
 - (4) the medical condition for which the Retiree was retired still exists, but has deteriorated sufficiently to warrant a change to totally disabled as defined in Section 2 of this regulation, and is not capable of any gainful employment.

- C. The Administrator may arrange for a Retiree who was retired pursuant to Section 19 or Section 20 of the CFRS Act and Section 3(A)(1) or Section 3(B)(1) of this regulation to undergo a medical reexamination at any time not to exceed one reexamination per year by or under the direction of the Medical Board to determine if the medical condition for which the disability Retiree was retired still exists.
- D. Within fourteen (14) days of the receipt of a medical report from the Medical Board as specified in sub-division A, B or C of this section, the Administrator shall mail a copy of such medical report to the Retiree. Within ten (10) days of the mailing of such medical report to the Retiree, the Administrator may request the Board of Trustees to conduct a Board Hearing pursuant to the provisions of Section 6 of this regulation. Such request for a Board Hearing shall be filed with the Chairman of the Board. Where a hearing is not requested, the Administrator shall report all findings of the Medical Board for ratification.
- E. Refusal by a Retiree to submit to a medical reexamination pursuant to this section shall cause all retirement benefits to cease forthwith and such person shall be entitled to:
 - (1) apply for reimbursement of the balance, if any, of his contributions to the Retirement System in the same manner and in all respects as in Section 10 of the CFRS Act; or
 - (2) defer his Accrued Benefit in the same manner and in all respects as in Section 11 of the CFRS Act if the Retiree had been credited with five or more years of Membership Service Credit as a Member of the CFRS.

SECTION 5- REINSTATEMENT

- A. Upon such medical reexamination as specified in Section 4 of this regulation, if the Board of Trustees finds that the Retiree is capable of reinstatement to employment with the Charlotte Fire Department, the Retiree shall be reinstated to a position equal in rank to his rank at the time he was retired as soon as such position becomes available in the Charlotte Fire Department, subject to meeting current Charlotte Fire Department hiring standards and Civil Service Board approval when the Retiree was dismissed pursuant to section 4.61 (f) of the Charlotte City Charter.
- B. Refusal by the Retiree to return to work as a result of a finding by the Board of Trustees shall cause all retirement benefits to cease forthwith and such person shall be entitled to:
 - (1) apply for reimbursement of the balance, if any, of his contributions to the Retirement System in the same manner and in all respects as in Section 10 of the Charlotte Firefighters' Retirement System Act; or
 - (2) defer his Accrued Benefit in the same manner and in all respects as in Section 11 of the CFRS Act if the Retiree had been credited with five or more years of Membership Service Credit as a Member of the CFRS.
- C. Upon the reinstatement of a Retiree to active duty following a medical reexamination pursuant to the provisions of this regulation any subsequent benefit paid by the System shall be based on the length of service after reinstatement with the Charlotte Fire Department.
 - (1) Where a reinstated Member serves less than one year after his reinstatement before retirement his Accrued Benefit upon retirement shall be as follows:
 - (a) The total Accrued Benefit credited between his reinstatement and subsequent retirement as computed in accordance with the provisions in effect on the date of the Member's subsequent retirement; plus

- (b) The total Accrued Benefit credited at the time of his effective date of disability retirement as computed in accordance with provisions in effect on the date of his disability retirement.
- (2) Where a reinstated Member serves more than one year, but less than three years, after his reinstatement before retirement, his Accrued Benefit upon retirement shall be as follows:
 - (a) The total Accrued Benefit credited between his reinstatement and subsequent retirement as computed in accordance with the provisions in effect on the date of the Member's subsequent retirement; plus
 - (b) The total Accrued Benefit credited on the effective date of his disability retirement as computed by applying both the provisions in effect on the date of the Member's subsequent retirement and the provisions in effect on the date of the Member's disability retirement. The provisions in effect on the date of the Member's subsequent retirement shall be applied to one-third of the Accrued Benefit credited on the effective date of the Member's disability retirement for each year served following reinstatement. The remaining portion of the Member's Accrued Benefit credited on the date of his disability retirement shall be computed in accordance with provisions in effect on the effective date of the Member's disability retirement. For periods greater than one calendar year, but less than three calendar years, the provisions in effect on the date of the Member's subsequent retirement and the provisions in effect on the date of the Member's disability retirement shall be applied proportionally to the remaining Accrued Benefit credited on the effective date of the Member's disability retirement.
- (3) Where a reinstated Member serves at least three years after his reinstatement before retirement, his total Accrued Benefit upon retirement shall be computed in accordance with the provisions in effect on the date of his subsequent retirement.

SECTION 6 - HEARINGS BEFORE THE BOARD OF TRUSTEES

The Board of Trustees shall conduct a Board Hearing not less than thirty (30) days nor more than sixty (60) days from the date the request was filed by the Administrator with the Chairman of the Board.

The Chairman of the Board of Trustees shall promptly schedule the hearing and shall notify the Member, the Administrator, and any party in interest by certified mail, return receipt requested, of the scheduled hearing date. Should the Administrator or Member desire a hearing date other than that set by the Board within the time period set forth above, the Member or Administrator shall file a written request for a change of hearing date setting forth the reasons for such request.

The Chairman of the Board is empowered to approve or disapprove such requests; provided such requests are received by the Chairman at least seven (7) days prior to the date set for the hearing. For good cause, the Chairman of the Board may set a hearing date other than the prescribed above and may continue the hearing from time to time. The determination of good cause shall be the decision of the Chairman.

The Chairman of the Board shall have the power to administer oaths. The Member or the Administrator, as well as the Board, shall have the power to compel the production of documents and other evidence. The Member, Administrator, and Board shall be responsible for obtaining witnesses and insuring their presence at the hearing. All costs for obtaining witnesses shall be borne by the requesting party.

The Board functions as an administrative agency and is charged with administering the provisions of the Charlotte Firefighters' Retirement System Act which, among other things, provides retirement, disability and survivor benefits for the uniformed employees of the Charlotte Fire Department who are entitled thereto under the provisions of the Act. The Chairman of the Board shall preside over all hearings and shall explain its rules regarding hearings to all parties.

The Board is not a court but has adopted certain due process considerations, which shall be adhered to. The Board is entitled to resolve disputed questions of fact and apply rules and regulations to its findings of fact much in the manner of a court.

During a hearing the Chairman functions as a presiding authority over all matters of conduct, procedure and the admissibility of evidence. The Administrator and the Member shall have the right to present relevant evidence to the Board at the hearing regarding whether the Member is or is not partially, temporarily, totally or totally and permanently disabled for duty with the Charlotte Fire Department by reason of an injury, accident or occupational disease arising out of or in the course of his actual performance of duty in his employment with the Charlotte Fire Department or the Member is or is not partially, temporarily, totally or totally and permanently disabled for duty with the Charlotte Fire Department in his or her classification by reason of an injury, accident or disease that did not arise out of and in the course of his or her actual performance of duty in employment with the Charlotte Fire Department.

A Member may be present at all evidentiary portions of the hearing, may retain counsel to represent him at the hearing, may call witnesses, may present documentary or real evidence, and may cross-examine those witnesses produced by any other party. The North Carolina Rules of Evidence, generally, shall be applied by the Board but their provisions shall be liberally construed. Technical objections are discouraged. The Chairman shall rule on all objections to evidence.

All witnesses before the Board shall be sworn or shall affirm. In all cases concerning an application for disability retirement benefits, the burden of proof, except as provided by law, shall be borne on the Member seeking to show entitlement to such benefits. In cases concerning the termination or reduction of disability benefits, the burden of proof shall be on the Administrator. The Administrator shall present evidence showing the jurisdiction of the Board, unless otherwise stipulated. Typically, the order of questioning of a witness shall be: direct examination and cross-examination conducted by the parties, then questions may be asked by Board members.

At the conclusion of all evidence, the parties will be allowed to make closing arguments before the Board retires to deliberate. The Chairman may set time limits on closing arguments. After the evidentiary portion of the hearing is concluded, the Board will consider the evidence in closed session and the Board will make findings of fact together with a statement of the action taken by the Board on the basis of its findings of fact.

The decision of the Board, at the discretion of the Board, shall be rendered at the close of the hearing or within seven (7) days following the close of the hearing. Regardless, the Member and Administrator shall be served with a copy of the decision in person or by certified mail, return receipt requested.

SECTION 7 - GENERAL POWERS OF THE BOARD

At the completion of the hearing, the Board is authorized to issue an order:

- (a) Upholding the determination of the Medical Board; or
- (b) Modifying the determination of the Medical Board; or
- (c) Referral of medical evidence for review and redetermination of the Medical Board; or
- (d) Rejecting the determination of the Medical Board and imposing such other disposition of the matter as is deemed just and proper under the provisions of this Section; or
- (e) Suspending benefits when it determines that the Retiree has not proven earnest efforts toward rehabilitation and treatment of his or her disability; or
- (f) Reinstating benefits when it determines that the Retiree has proven earnest efforts toward rehabilitation and treatment of his or her disability.

The Board may, among other things, determine that the medical condition of the Member does not exist or no longer exists and that the Retiree or Member is capable of reinstatement to employment with the Charlotte Fire Department; or determine that the Member is partially or totally disabled as defined in Section 2 of this regulation, for duty in his classification with the Charlotte Fire Department, but is capable of other gainful employment such as to justify a modification of benefits received under this Section; or determine that the Member is totally and permanently disabled as defined in Section 2 of this regulation for any gainful employment.

The Board shall have the right, pursuant to Section 4 of this regulation, to arrange for the reexamination of a Member who has retired or is seeking to retire pursuant to Section 19 or 20 of the CFRS Act.

SECTION 8 - APPEAL

The Member or any person filing on his behalf or the Administrator may appeal from any order of the Board to the Superior Court of Mecklenburg County by giving notice of appeal, in writing, to the Superior Court within ten (10) days from the entry of the order. Assignments of error must be filed with the court and served upon the Board within thirty (30) days after the entry of the order. The appeal to the Superior Court would be upon the record of the proceedings before the Board at its hearing and shall be in the nature of a petition for certiorari.

SECTION 9 - OTHER

- A. **Medical Evidence and Documentation:** A Member who applies for a disability retirement pursuant to Section 19 or Section 20 of the CFRS Act and this regulation shall be responsible for submitting all medical evidence and documentation that he wishes to have evaluated by the Medical Board to the examining physician at the time of the medical examination or reexamination. The Member shall also be responsible for submitting any documentation that he wishes to have considered by the Board at a Board Hearing to the Secretary at least five (5) working days prior to such hearing.
- B. **Rehabilitation:** A Retiree who is retired pursuant to Section 19 or Section 20 of the CFRS Act and this regulation shall present himself or herself to the State of North Carolina Division of Vocational Rehabilitation Services for an assessment of his or her physical, emotional and/or vocational rehabilitation opportunities. The Retiree shall be responsible to work with the rehabilitation counselor to develop an Individual Written Rehabilitation Program and provide a copy of such program to the Administrator. Upon the request of the Administrator, the Retiree shall submit all additional medical evidence and documentation certifying such rehabilitation efforts for the Administrator's evaluation.

If the Retiree fails to submit such medical evidence and documentation in a timely manner or if the Administrator, upon his review, is not satisfied with the Retiree's rehabilitation efforts, the Administrator may request and the Board of Trustees shall conduct a Board Hearing pursuant to the provisions of Section 6 of this regulation.

- C. Disability Retirement Benefits: A Retiree who is retired pursuant to Section 19 or Section 20 of the CFRS Act and this regulation shall receive the disability retirement benefits specified in either Section 19 (c) or Section 20 (c), as appropriate, except:
- (1) a Retiree who is defined by this regulation as partially disabled:
 - (a) and was retired pursuant to Section 19 of the CFRS Act shall receive a percentage of the disability retirement benefits provided by Section 19 (c) of the Act in an amount equal to twice the percentage of disability rating, to a maximum of 100%, as certified by the Medical Board; or
 - (b) and was retired pursuant to Section 20 of the CFRS Act shall receive a percentage of the disability retirement benefits provided by Section 20 (c) of the Act in an amount equal to the percentage of disability rating as certified by the Medical Board.
 - (2) a Retiree receiving disability retirement benefits shall revert to a service retirement as specified in Section 15 of the CFRS Act and shall receive the greater of such disability retirement benefits or his Accrued Benefit as defined by the CFRS Act determined as of the last date of active employment with the **CFD** at such time as the Retiree's attained age and Membership Service Credit meet the requirements for a service retirement as specified in the CFRS Act.