

Sec. 3309.39. (A) The school employees retirement system shall provide disability coverage to each member who has at least five years of total service credit.

Not later than October 16, 1992, the school employees retirement board shall give each person who is a member on July 29, 1992, the opportunity to elect disability coverage either under section 3309.40 of the Revised Code or under section 3309.401 of the Revised Code. The board shall mail notice of the election, accompanied by an explanation of the coverage under each of the Revised Code sections and a form on which the election is to be made, to each member at the member's last known address. The board shall also provide the explanation and form to any member at the member's request.

Regardless of whether the member actually receives notice of the right to make an election, a member who fails to file a valid election under this section shall be considered to have elected disability coverage under section 3309.40 of the Revised Code. To be valid, an election must be made on the form provided by the retirement board, signed by the member, and filed with the board not later than one hundred eighty days after the date the notice was mailed, or, in the case of a form provided at the request of a member, a date specified by rule of the retirement board. Once made, an election is irrevocable, but if the member ceases to be a member of the retirement system, the election is void. If a person who makes an election under this section also makes an election under section 145.35 or ~~3307.42~~ **3307.62** of the Revised Code, the election made for the system that pays a disability benefit to that person shall govern the benefit.

Disability coverage shall be provided under section 3309.401 of the Revised Code for persons who become members after July 29, 1992, and for members who elect under this division to be covered under section 3309.401 of the Revised Code.

The retirement board may adopt rules governing elections made under this division.

(B) Application for a disability benefit may be made by a member, by a person acting in the member's behalf, or by the member's employer, provided the member has at least five years of total service credit and has disability coverage under section 3309.40 or 3309.401 of the Revised Code. The application for a disability benefit shall be made on a form provided by the retirement board. The benefit payable to any member who is approved for a disability benefit shall become effective on the first day of the month next following the later of the following:

- (1) The last day for which compensation was paid;
- (2) The date on which the member was first incapacitated by the disabling condition.

(C) Medical examination of a member who has applied for a disability benefit shall be conducted by a competent disinterested physician or physicians selected by the retirement board to determine whether the member is mentally or physically incapacitated for the performance of the member's last assigned primary duty as an employee by a disabling condition either permanent or presumed to be permanent for twelve continuous months following the filing of an application. Such disability must have occurred since last becoming a member or have increased since last becoming a member to such extent as to make the disability permanent or presumed to be permanent for twelve continuous months following the filing of an application.

(D) Application for a disability benefit must be made within two years from the date the member's contributing service terminated, unless the retirement board determines that the member's medical records demonstrate conclusively that at the time the two-year period expired, the member was physically or mentally incapacitated for duty as an employee and unable to make application. Application may not be made by any person receiving a service retirement allowance or commuted service retirement allowance under section 3309.36, 3309.38, or 3309.381 of the Revised Code or any person who, pursuant to section 3309.42 of the Revised Code, has been paid the accumulated contributions standing to the credit of the person's individual account in the employees' savings fund.

(E) If the physician or physicians determine that the member qualifies for a disability benefit, the retirement board concurs with the determination, and the member agrees to medical treatment as specified in division (F) of this section, the member shall receive a disability benefit under section 3309.40 or 3309.401 of the Revised Code. The action of the board shall be final. At the time the board decides it concurs with the determination of the physician or physicians, the board shall determine the date on which the member was first incapacitated by the disabling condition.

(F) The school employees retirement board shall adopt rules requiring a disability benefit recipient, as a condition of continuing to receive a disability benefit, to agree in writing to obtain any medical treatment recommended by the board's physician and submit medical reports regarding the treatment. If the board determines that a disability benefit recipient is not obtaining the medical treatment or the board does not receive a

required medical report, the disability benefit shall be suspended until the treatment is obtained, the report is received by the board, or the board's physician certifies that the treatment is no longer helpful or advisable. Should the recipient's failure to obtain treatment or submit a medical report continue for one year, the recipient's right to the disability benefit shall be terminated as of the effective date of the original suspension.

(G) In the event an employer files an application for a disability benefit as a result of a member having been separated from service because the member is considered to be mentally or physically incapacitated for the performance of the member's last assigned primary duty as an employee, and the physician or physicians selected by the board report to the board that the member is physically and mentally capable of performing service similar to that from which the member was separated, and the board concurs in such report, then the board shall so certify to the employer and the employer shall restore the member to the member's previous position and salary or to a similar position and salary.