

## Opinion No. 60-108

June 13, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. John C. Hays Executive Secretary Public Employees Retirement Board 403  
Don Gaspar Santa Fe, New Mexico

### QUESTION

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Is an applicant entitled to duty disability since he was not disabled after duty disability went into effect and when applicant did not have fifteen years service at least five years of which were contributing service?

#### CONCLUSION

No, see analysis.

### OPINION

#### {\*479} ANALYSIS

This applicant was disabled during the year 1950. At that time we had no duty disability retirement law in New Mexico. In the year 1953 the following law was passed:

"Upon the application of a member, or his department head, a member who becomes totally and permanently incapacitated for duty in the service of his affiliated public employer by reason of a personal injury or disease, which the Retirement Board finds to have occurred as the natural and proximate result of causes arising solely and exclusively out of and in the course of his employment by his affiliated public employer, shall be retired: Provided, that after a medical examination of the said member made by or under the direction of a {\*480} medical committee, consisting of 1 or more physicians designated by the retirement board, the said medical committee certifies to the board, by a majority opinion submitted in writing, (1) that the said member is mentally or physically totally incapacitated for the performance of his duty in the service of his affiliated public employer, and (2) that such incapacity will probably be permanent; and Provided further, that the report of the said medical committee is concurred in by the retirement board."

It is plain from the language quoted above that the statute should be construed prospectively and not retroactively.

Volume 82 of C.J.S., at page 558, § 319, states as follows:

## "GENERAL PROSPECTIVE CONSTRUCTION

Statutes framed in general terms and not plainly indicating the contrary will be construed prospectively, so as to apply to persons, subjects, and things within their purview and scope coming into existence subsequent to their enactment.

Statutes framed in general terms ordinarily apply to cases and subjects within their terms subsequently arising, and, unless plainly indicating the contrary, are to be construed prospectively, especially where substantive rights are involved. Accordingly, it is a usual rule of statutory construction that legislative enactments in general and comprehensive terms, prospective in operation, apply alike to all persons, subjects, and business within their purview and scope coming into existence subsequent to their passage."

At the time of the accident of this applicant, the statute did not provide for duty disability. It did provide for disability provided that the person had fifteen years of service of which at least five years were contributing service. At the time of the accident this member did not and could not qualify for disability benefits.

It is, therefore, the opinion of this office that applicant in question is not qualified and not entitled to duty disability.

By: Hilario Rubio

Assistant Attorney General