

ORDINANCE NO. 200828

Amending Chapter 2, Code of Ordinances, by amending Sections 2-1251, 2-1262 and 2-1267 to include clinical psychologists as potential appointees to medical boards for purposes of determining disability retirement in the firefighters' pension system.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 2, Code of Ordinances, entitled "Administration," is hereby amended by repealing sections 2-1251, 2-1262, and 2-1267 and enacting in lieu thereof new sections of like number and subject matter to read as follows.

Sec. 2-1251. Definitions.

The following words and phrases as used in this division, unless a different meaning is plainly required by the context, shall have the following meanings:

Accumulated contributions means the sum of all amounts deducted from the compensation of the member and credited to the member's individual account in the pension fund, together with regular interest thereon, excluding, however, the initiation fee and service charges required by this division.

Annual compensation means compensation defined in section 415(c)(3) of the Internal Revenue Code and section 1.415-2(d) of the Treasury Regulations, but in no event more than \$200,000.00 per calendar year (as adjusted annually under section 401(a)(17) of the Internal Revenue Code). Annual compensation also includes amounts contributed by the employer pursuant to a salary reduction agreement which are excludable from a member's gross income under sections 125, 401(a)(8), 402(h), or 403(b) of the Internal Revenue Code.

Effective on and after January 1, 1996, in addition to other applicable limitations set forth in the plan, and notwithstanding any other provision of the plan to the contrary, for plan years beginning on or after January 1, 1996, and only for employees who were not members before January 1, 1996, the annual compensation of each member taken into account under the plan shall not exceed to OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is \$150,000.00, as adjusted by the commissioner for increases in the cost of living in accordance with section 401(a)(17) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

For plan years beginning on or after January 1, 1996, and only for employees who were not members before January 1, 1996, any reference in this pension system plan to

ORDINANCE NO. 200828

the limitation under section 401(a)(17) of the Internal Revenue Code shall mean the OBRA '93 annual compensation limit set forth in this provision.

If compensation for any prior determination period is taken into account in determining a member's benefits accruing in the current plan year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the plan year beginning on or after January 1, 1996, or OBRA '93 annual compensation limit is \$150,000.00.

Average final compensation means the monthly average of the two highest years of compensation of the member in the last ten years, whether or not such years are consecutive. Such average final compensation shall include any sick leave or vacation leave credited at retirement date.

Beneficiary means any person in receipt of a pension, retirement allowance or other benefit, or designated by any member to receive benefits upon the member's death.

Board of trustees means the board provided for in section 2-1255 to administer the pension system.

Compensation means the basic monthly wage or salary paid an employee excluding bonuses, overtime, expense allowance and other extraordinary compensation. Compensation shall include amounts contributed to any plan maintained by the employer pursuant to a salary reduction agreement where the member could have elected to receive such amount as case compensation.

Creditable service means prior service plus membership service, if continuous. If member who terminates and withdraws accumulated contributions and interest is subsequently employed as firefighter, the member must repay total withdrawal plus interest as described in section 2-1253(d) before years prior to termination are considered creditable service.

Division means this division, as amended, and as this division may hereafter be amended.

Firefighter means any officer or employee of the fire department of the city employed for the duty of fighting fires, but not anyone employed in a clerical or any other capacity not involving firefighting duties. It shall, however, include all persons originally employed for firefighting duties, and who actually performed such duties, but for various reasons were transferred to other divisions of the fire department. In case of doubt as to whether any person is a firefighter within the meaning of this division, the decision of the board of trustees shall be final.

Fiscal year means the fiscal year of the city.

ORDINANCE NO. 200828

Medical board means the board of physicians and clinical psychologists provided for in this division.

Member means a member of the pension system as defined in section 2-1252.

Membership service means service as a firefighter rendered since last becoming a member after July 1, 1953.

Pension means a monthly payment for life. The first payment shall be made at the end of the month after the effective date of the benefit as established by the board of trustees. The final payment of all pensions and any child's allowance shall be made at the end of the month in which the event causing cessation of the payment occurs and shall be made for the full monthly amount without reduction.

Pension fund means the fund resulting from contributions made thereto by the city, by members of the pension system and from other sources, together with the earnings thereon.

Pension system means the firefighter's pension system as set out in this division.

Prior service means all service as a firefighter prior to the date the pension became effective.

Regular interest means interest at such rate as may be set by the board of trustees, not to exceed three percent per annum, compounded annually.

Spouse means the wife or husband, lawfully married in any jurisdiction, of a member

Surviving spouse means the spouse of a member surviving the member's death.

Tier 1 Member means a member of the pension system whose membership began prior to April 20, 2014.

Tier 2 Member means a member of the pension system whose membership began on or after April 20, 2014.

Sec. 2-1262. Medical advisors to board of trustees.

The board of trustees shall designate not fewer than two and not more than three physicians or clinical psychologists who shall constitute the medical board, which shall arrange for and pass upon all medical examinations required under this division.

Sec. 2-1267. Disability retirement.

(a) *Duty disability.*

- (1) A member, regardless of age or years of creditable service, who becomes totally and permanently disabled, as defined in this division, prior to the time he is otherwise entitled to pension under this division, and substantially caused by actual performance of duty as a firefighter, as determined by the board of trustees in accordance with its fact finding procedures, shall be retired on the first day of the month following determination by the board of such disability. Such fact finding procedures may require review of the facts regarding the line of duty incident by a subcommittee of the board; or by an independent fact finder appointed by the board; and in consultation with a legal advisor retained by the board. The city, and any employee or official of the city, shall cooperate with the fact finding procedures, and shall divulge information as requested by the board in determining the duty disability of a member.
- (2) After five years' service, any disability caused by disease of the lungs or respiratory tract, hypertension or disease of the heart shall be presumed to have been suffered in line of duty, if the member successfully passed a physical examination within five years prior to date of application, unless the contrary be shown by competent evidence.

(b) *Nonduty disability.*

- (1) A member under the age of 65 years with ten or more years of creditable service, who becomes totally and permanently disabled, as defined in this division, prior to the time he is otherwise entitled to a pension under this division, shall be retired on the first day of the month following determination by the board of such disability.
- (2) No benefit shall be payable if the disability is caused while engaging in any occupation or performing any work for remuneration or profit while in service of another employer or in self-employment.
- (3) Should a member be disabled while serving another employer, or in self-employment, he shall be treated as a terminated member.

(c) *Determination of disability status.* A member shall be deemed to have become totally and permanently disabled when the member is in a state or condition of disability which presumably prevents the member from performing the duties of a firefighter for the rest of the member's life. Such disability, whether duty or nonduty, must not have been contracted, suffered or incurred while the member was engaged in or result from having been engaged in a criminal act or enterprise, or result from habitual

ORDINANCE NO. 200828

drunkenness or addiction to narcotics or from self-inflicted injury, or from disability incurred while in the service in the armed forces of the United States or any foreign country.

(d) *Authority of board of trustees.* The board of trustees in its sole judgment shall determine whether the status of total and permanent disability exists, and its determination shall be binding and conclusive, subject to any right of review provided by this division. In making such determination, the board of trustees shall rely upon the findings of a medical board, as defined in this division. The written opinion of any two members of the medical board shall be required. The medical board shall be appointed by the board of trustees, and the expenses of an examination by the medical board shall be paid from the funds of the retirement system.

(e) *Recovery from disability.* From time to time, the board of trustees shall have the right to require proof of continuing disability, which may include:

- (1) Further examination by the medical board; or
- (2) Submission of additional information by the member regarding employment and other personal activities.

The board may follow its fact finding procedures in developing proof of continued disability. If a member fails to respond to board requests for evidence of a continuing disability, or fails to submit to further medical examination, the board may terminate payment of disability retirement payments. If the board of trustees determines that disability no longer exists, it shall promptly terminate payment of the disability retirement payments. In that event, the member shall be considered terminated from the retirement system unless the member promptly returns to full-time service as a firefighter. If the member promptly returns to service as a firefighter following termination of disability, the period of disability retirement will not be counted as creditable service for determining further benefits under this division, but such period of disability shall not be construed as interrupting continuous creditable service. All disability retirement payments received shall be charged against the member's accumulated contributions as defined in this division for the purpose of determining the accumulated contributions under this plan.

Approved as to form and legality:

Saskia Jacobse
Senior Associate City Attorney