

PHILADELPHIA BOARD OF PENSIONS AND RETIREMENT

REGULATION NO. 5

HEROIC ACTION EXEMPTION TO CODE SECTION 22-401(4)(.2)(c)

WHEREAS, The Board of Pensions and Retirement is empowered by Section 8-407 of the Home Rule Charter and Section 22-107 of the City of Philadelphia Public Employees Retirement Code (“Retirement Code”) to make all necessary regulations to carry into effect the provisions of the Retirement Code; and

WHEREAS, Section 22-401(4)(.2)(c) of the Retirement Code provides that police members receiving a service-connected disability pension must provide the Board with copies of their federal income tax returns, and those who earn outside income are subject to a reduction, or “offset,” in their disability pension based on their outside income.; and

WHEREAS, The Act 111 Interest Arbitration Award effective July 1, 1996, the Award effective July 1, 1998 and the Award effective July 1, 2000 which incorporated certain terms of the 1996 award provided that the above requirements shall not apply to police members who receive service-connected disability retirement benefits either as an immediate result of the violent conduct of a third party that was directed toward the officer or a member of the public or as an immediate result of performing other heroic action in an emergency situation in the line of duty; and

WHEREAS, The above awards also provided that the Board shall in its sole discretion determine eligibility for this exemption; and

WHEREAS, Pending before City Council is Bill No. 00536, adding a new subsection 22-401(4)(d) to the Retirement Code authorizing the Board to implement the terms of the above Arbitration Awards and to adopt regulations to define terms and provide for procedures;

NOW THEREFORE, The Board of Pensions and Retirement hereby adopts this Regulation No. 5, relating to the “heroic action exemption.”

5.1 Application

5.1.1. Form required. The heroic action exemption will be considered only upon application by the member, upon the form adopted by the Board. The form to be used will be that attached to this regulation, as it may be revised from time to time, in the sole discretion of the Executive Director of the Board.

5.1.2. Deadline and filing. In order for an application to be considered, the form adopted by the Board must be completed by the member and on file with the Board no later than the date of the member’s retirement interview with Pension Board staff, except that the Executive Director may extend this deadline by 14 calendar days, upon good cause shown.

5.2 Fact-gathering

5.2.1. The file. The applicant may submit any documentary evidence to support his or her application. In addition, the Board may request or receive information from the employee’s Department or any other Department, which shall be included in the file.

5.3 Consideration by the Board

5.3.1. Procedure. Except when not practicable, the Board shall list for final vote an application for the heroic action exemption for the same Board meeting as its initial consideration on the application for service-connected disability pension from the same member. A member may, under Board Regulation No. 1.1, appeal an adverse ruling to a hearing. In this way, a member who is denied both the pension and the exemption may, if desired, appeal both determinations to the same hearing.

5.4 Effect of determination

5.4.1. Exemption. Upon being determined to meet the heroic action exemption, a member shall not be subject to any of the requirements of Code Section 22-401(4)(.2)(c), including the income offset on any outside income and the requirement to provide the Board with copies of federal income tax returns. The Board shall send no notices of the tax return requirement to a member who has been granted the exemption.

5.5 Definitions. In applying the Ordinance, the Board shall award the exemption upon criteria using the following definitions for terms in Code Section 22-401(4)(.2)(d), as added by Bill No. 00536, and as it may be amended from time to time:

5.5.1 “Immediate result” is defined to mean that the heroic action or violent action of a third party was the final incident precipitating the disability. In other words, if an officer who is not disabled by a heroic action at the time but subsequently suffers a later injury (not under “heroic” conditions) to the same part of the body, and the doctors advise that the cumulative effect of both injuries disabled the officer, that officer would not be entitled to the exemption.

5.5.2 “Violent conduct” is defined to mean one of the following:

- i. An attempt or threat to inflict injury on another person, along with an apparent ability to do so, or
- ii. Any display of force that would give the victim reason to fear immediate bodily harm or that does result in bodily harm, or
- iii. Any action that by its nature is so forceful and uncontrolled that the actor should know that other persons are being recklessly endangered.

5.5.3 “Third party” is defined to mean any person other than the disabled officer. (The “second party” is considered to be the public as a theoretical entity.)

5.5.4 “Directed toward” is defined to include only intentional actions. For example, an accidental collision by another automobile (which would also fail the definition of “violent conduct”) would not be an action “directed toward” the person with whom the driver collided.

5.5.5 “Other heroic action” is defined to involve action in which the officer exhibits bravery by proceeding in the face of obvious or known danger to himself or others, or by placing himself or herself in danger in order to stop a crime, save a person from death or bodily harm or otherwise accomplish a task that would be his duty as a police officer even if the danger were not present.

5.5.6 “Emergency situation in the line of duty” is defined to mean either an unanticipated situation or a situation that clearly involves danger to the officer or others and where the officer is taking affirmative police action.

5.6 Effective Date. This regulation shall take effect upon the enactment of Bill No. 00536, provided that all the requirements of Charter Section 8-407 have been met.

Approved by Board of Pensions & Retirement – October 19, 2000

Became effective – December 6, 2000

Bill No. 00536 approved – December 6, 2000

APPENDIX – Application Form

BOARD OF PENSIONS AND RETIREMENT

**APPLICATION FOR HEROIC ACTION EXEMPTION
(Plan B or Plan D only)**

I, _____, Payroll Number _____,
print or type name

am applying for a service-connected disability pension from the City of Philadelphia Municipal Retirement System. In the event such a pension is approved, this form indicates whether I wish to apply for the “heroic action exemption.”

Check one:

- I am applying for the “Hero Exemption” exception from application of the obligation to provide tax returns and be subject to income offset, in Code Section 22-401(4)(c).
- I am **not** applying for the “Hero Exemption”. **[Checking this box, or failing to check either box, means that you forever give up the ability to apply for the exemption.]**

My disability is the result of the following condition, illness, injury, loss of function, or combination thereof:

As a result of the above incapacity, I am unable to perform the following job-related functions or activities:

I claim that the above-stated incapacity was caused by the following on-duty accident(s) or working condition(s) **[List dates of all accidents and duties being performed at the time; for working conditions, list beginning and ending dates of the period that you worked under those conditions and duties being performed during that period]:**

Signature of member

Date

