

With respect to the exercise of an option as provided in R. S. 43:14-38, the member, in my opinion, must make the election, and I am likewise of opinion that he would have no right to designate a beneficiary. Upon the members' retirement for ordinary disability, monthly payments of the amount allowed may be made to her guardian duly appointed, and should there be a balance due upon her death, such balance can be paid to her estate.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General,*

By: THEODORE BACKES,  
*Deputy Attorney General.*

TB:B

JUNE 14, 1950.

MR. GEORGE M. BORDEN, *Secretary,*  
*State Employees' Retirement System,*  
1 West State Street,  
Trenton 7, New Jersey.

FORMAL OPINION—1950. No. 41.

DEAR MR. BORDEN :

I have your letter of the 9th instant with enclosures. I gather from the papers that a veteran retired from your retirement system by withdrawing his accumulated deductions on February 15, 1949, and ceased to be eligible for any of the benefits of your act until he re-enrolled on November 1, 1949; that on April 28, 1949, while mowing his lawn, he had a heart attack.

The right to withdraw his accumulated deductions was accorded the veteran by R. S. 43:14-43 "without prejudice to his right as a veteran to any benefit to which he may be entitled under any other law."

Undoubtedly, the veteran withdrew his accumulated deductions and thus ceased to be a member of your fund because of the privilege accorded him by the Veterans' Act to retire after twenty years of service and reaching the age of sixty-two. (R. S. 43:4-1 et seq.). It now appears that the veteran, after suffering the heart attack, decided to rejoin the system and he did so. I believe he now claims the right to an accident disability allowance.

When he suffered the heart attack, he was not a member of your fund and his re-enrollment after the accident did not restore to him the right to an accident disability retirement when such accident if it, in fact, be established as such, occurred, as I have indicated, during the period of time when he was not a member of the fund.

I am returning herewith all the papers which you enclosed me.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General,*

By: THEODORE BACKES,  
*Deputy Attorney General.*

Encs.