

June 8, 1955.

MR. WILLIAM J. JOSEPH,  
*Bureau of Public Employees' Pensions,*  
State House Annex,  
Trenton, New Jersey.

## MEMORANDUM OPINION P-15

DEAR MR. JOSEPH:

You have asked our opinion as to the rights of a public employee veteran who terminates his public employment after twenty years of service, but before having attained the age of sixty.

N. J. S. A. 43:15A-38 provides as follows:

"Should a member of the Public Employees' Retirement System, after having completed 20 years of service, be separated voluntarily or involuntarily from the service, before reaching service retirement age, and not by removal for cause on charges of misconduct or delinquency, such person may elect to receive: (a) the payments provided for in section 41.b. of this act, if he so qualifies under said section, or; (b) a deferred retirement allowance, beginning at the retirement age, which shall be made up of an annuity derived from the accumulated deductions standing to the credit of the individual member's account in the annuity savings fund at the time of his severance from the service, and a pension which when added to the annuity will produce a total retirement allowance of 1/70 of his final compensation for each year of service credited as Class A service and 1/60 of his final compensation for each year of service credited as Class B service, calculated in accordance with section 48 of this act, with optional privileges provided for in section 50 of this act; provided, also that such election is communicated by such member to the board of trustees in writing stating at what time subsequent to the execution and filing thereof he desires to be retired; and provided further, that such member, as referred to in subsection (b) may later elect: (a) to receive the payments provided for in section 41.b. of this act, if he had qualified under that section at the time of leaving service, or; (b) to withdraw his accumulated deductions or, if such member shall die before attaining service retirement age then his accumulated deductions shall be paid to such person, if living, as he shall have nominated by written designation duly executed and filed with the board of trustees otherwise to the executor or administrator of the member's estate."

Since N. J. S. A. 43:15A-41b, which is referred to in N. J. S. A. 43:15A-38 refers to the annuity and reduces pension benefits immediately payable to a member who resigns after completing 25 years of service, we shall not be concerned with that section here.

N. J. S. A. 43:15A-61 provides, in part, as follows:

"a. Any public employee veteran member in office, position or employment of this State or of a county, municipality, or school district or board of education on January 2, 1955, who remains in such service thereafter and who has or shall have attained the age of 60 years and who has or shall have been for 20 years in the aggregate in office, position or employment of this State or of a county, municipality or school district or board of education, satisfactory evidence of which service has been presented to the board of trustees, shall have the privilege of retiring and of receiving a retirement

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allowance of 1/2 of the compensation received during the last year of employment upon which contributions to the annuity savings fund or contingent reserve fund are made with the optional privileges provided for in section 50 of this act.

"b. Any veteran becoming a member after January 2, 1955, who shall be in office, position or employment of this State or of a county, municipality or school district or board of education and who shall have attained 62 years of age and who shall present to the board of trustees satisfactory evidence of 20 years of aggregate service in such office, position or employment shall have the privilege of retiring and of receiving a retirement allowance of 1/2 of the compensation received during the last year of employment upon which contributions to the annuity savings fund or contingent reserve fund are made with the optional privileges provided for in section 50 of this act . . ."

In view of the statutes cited above, you have asked whether a public employee veteran who, after having completed twenty years of service, is separated from service not for cause, misconduct, or delinquency, should upon attaining the age of sixty, receive a retirement allowance of one-half of the compensation he received during the last year of his employment pursuant to N. J. S. A. 43:15A-61a, or the lesser benefits provided by N. J. S. A. 43:15A-38.

N. J. S. A. 43:15A-61a provides the privilege of retirement at one-half pay to any public employee veteran member in office, position, or employment "on January 2, 1955, who remains in such service thereafter and who has or shall have attained the age of 60 years and who has or shall have been for 20 years in the aggregate in office, position, or employment." Therefore, a public employee veteran with twenty years of service who was in public service on January 2, 1955, but who does not remain in such service until attaining the age of sixty, can acquire no right to retirement at one-half pay under said section.

Furthermore, N. J. S. A. 43:15A-38, which is referred to in the index preceding Chapter 15A of Title 43 in the Revised Statutes as pertaining to "vesting," is the only section which provides for a deferred retirement allowance for employees whose employment is terminated before they reach the age of retirement. Since this section makes no distinction between veterans and non-veterans as to the deferred retirement allowances available, its terms must be held to govern the deferred retirement allowances available to all public employees.

Very truly yours,

GROVER C. RICHMAN, JR.,  
*Attorney General.*

By: CHARLES S. JOELSON,  
*Deputy Attorney General.*