

We, therefore, are of the opinion that the Unsatisfied Claim and Judgment Fund Board may accept as valid notices under N. J. S. A. 39:6-65, notices given by one person in behalf of another in the cases set forth above.

Yours very truly,

GROVER C. RICHMAN, JR.,
Attorney General.

By. CHARLES S. JOELSON,
Deputy Attorney General.

August 31, 1955.

MR. GEORGE M. BORDEN, *Secretary,*
Public Employees' Retirement System,
48 West State Street,
Trenton 7, N. J.

MEMORANDUM OPINION P-25.

DEAR MR. BORDEN:

You have requested our opinion as to whether the Public Employees' Retirement System should continue the practice of withholding the payment of an accidental disability retirement allowance to a public employee for such period of time as the public employee is collecting workmen's compensation payments as a result of the same accident upon which his claim for an accidental disability retirement allowance is based. You have attached to your request for an opinion a letter from the attorney of a public employee who claims to be entitled to an accidental disability retirement allowance even though he is presently receiving workmen's compensation payments as a result of the same accident upon which his claim for accidental disability retirement is based. In attempting to support such a position, the attorney for the public employee states:

" . . . It is my understanding that the Board has rejected claim on the basis of the provisions of R. S. 34:15-43.

If my understanding is true, I respectfully direct the Board's attention to the fact that that statute provides that workmans' compensation shall not be paid to an employee who has been retired. The statute is under the Workman's Compensation Act. It certainly does not indicate that a person may not be retired who is receiving workman's compensation. I do not believe that the Board should concern itself with workman's compensation. . . ."

N. J. S. A. 43:15A-43 which provides for accidental disability retirement for members of the Public Employee's Retirement System makes no reference to the relationship between workmen's compensation benefits and accidental disability retirement under the Public Employee's Retirement System. However, R. S. 34:15-43, which is to be found in the Workmen's Compensation Act, provides as follows:

"Every employee of the state, county, municipality or any board or commission, or any other governing body, including boards of education, and also each and every active volunteer fireman doing public fire duty under

the control or supervision of any commission, council or any other governing body of any municipality or any board of fire commissioners of such municipality or of any fire district within the state, who may be injured in line of duty shall be compensated under and by virtue of the provisions of this article and article 2 of this chapter (§ 34:15-7 et seq.), but no person holding an elective office shall be entitled to compensation. *Nor shall any former employee who has been retired on pension by reason of injury or disability be entitled under this section to compensation for such injury or disability. . . .*" (Underscoring supplied).

In *DeLorenzo v. City of Newark*, 134 N. J. L. 7 (E. & A. 1945), the court considered the case of a public employee who, while receiving workmen's compensation benefits, applied for retirement under R. S. 43:12-1, which provides pension for municipal employees. In rejecting the plaintiff's claim that he was entitled to be granted a pension while receiving workmen's compensation benefits, the court stated:

"The issue to be determined is whether a public employee receiving workmen's compensation payments for physical disability, which arose out of and in the course of his employment with the defendant, may also receive a pension under the provisions of R. S. 43:12-1. We do not find any legislative authority which expressly permits the payment of both a pension and workmen's compensation payments to a public employee, nor does the plaintiff submit any judicial authority therefor in this state. . . .

We distinguish between the status of a person receiving a pension and a person receiving workmen's compensation. The relationship of an employer and an employee is not consistent with the position of a pensioner as such, for the reason that a pensioner severs all relationship of employer and employee, he has no further duty to his employer nor is he entitled to any of the benefits which may accrue to an employee. An employee receiving workmen's compensation is under the relationship of employee and employer, as is indicated by the fact that such employee must continue to be carried on the public payroll pursuant to R. S. 34:15-44. The plaintiff must be one or the other and as he admittedly now receives workmen's compensation he is an employee. We therefore hold that the plaintiff cannot have the benefits of both statutes. *Judson v. Newark Board of Works Pension Association*, 132 N. J. L. 106; affirmed, 133 Id. 28."

While it is true that the pension sought by the plaintiff in the above-cited case was one based upon years of service and age, rather than upon disability, the logic of its reasoning would be equally applicable to an application for a disability retirement allowance.

It is, therefore, our opinion that the Public Employees' Retirement System should continue to withhold payment of an accidental disability retirement allowance to a public employee for such period of time as he is collecting workmen's compensation payments.

Yours very truly,

GROVER C. RICHMAN, JR.,
Attorney General.

By: CHARLES S. JOELSON,
Deputy Attorney General.

csj;b
cc:Mr. Steven Schanes