

Opinion No. 68

**Industrial Accident Board—Public Employees Retirement System—
Employees—Industrial Disease—Statute Chapter 212, Laws of 1945.**

Held: 1. Chapter 212, Montana Session Laws of 1945, places upon the Industrial Accident Board the duty to determine questions of fact regarding the origin of a disabling injury or disease in cases certified to it by the Public Employees Retirement Board.

November 5th, 1949.

Mr. Walter Coombs
Chairman
Industrial Accident Board
Helena, Montana

Dear Mr. Coombs:

You have requested my opinion on the question whether or not the Industrial Accident Board is required by Chapter 212, Session Laws of 1945, to certify regarding disability arising out of disease, when the Industrial Accident Board has no jurisdiction under the Workman's Compensation Act to inquire into occupational diseases.

Chapter 212, Session Laws of 1945, Section 20 (h) sets forth the procedure to be followed by the Board of Administration of the Public Employees Retirement System. It states:

"Any member shall be retired for disability regardless of age or amount of service, if incapacitated for the performance of duty as the result of an injury or disease arising out of and in the course of his employment. Incapacity for performance of duty shall be determined by the Board of Administration, **but the Industrial Accident Board shall determine, in the same manner as for all other State employees, whether such incapacity is the result of injury or disease arising out of and in the course of employment.** In the absence of an application to the Industrial Accident Board, filed by a proper party, the Board of Administration hereunder shall proceed with retirement and with the payment of benefits payable under the retirement system when disability does not result from injury or disease arising out of and in the course of their employment. If the Industrial Accident Board determines on the basis of such an application subsequently filed, that disability resulted from the injury or disease arising out of and in the course of employment, an amount equal to said benefits shall be deducted from the benefits payable under the retirement system because of such determination. Any such member incapacitated for the performance of duty by reason of a cause not included in the immediately preceding sentence, and any other member so incapacitated, regardless of the cause, shall be retired regardless of age but only after ten (10) years of service to the State, or to the contracting city." (Emphasis supplied.)

It is apparent that the Legislature intended the factual determination of the Industrial Accident Board to be conclusive on the question whether or not the disabling injury or disease arose out of and in the course of employment. This is an ordinary procedure in the case of most disabilities arising as a result of an accident.

Heretofore, I have had occasion to pass on the effect of the statute of limitations governing claims under the Workman's Compensation Act as they affect the validity of a claim under the Public Employees Retirement System. In Opinion Number 65, Volume 23, Opinions of the Attorney General, I held that the statute of limitations on claims under the Workman's Compensation Act cannot affect the validity of the factual determination called for under Section 20 (h) of Chapter 212, Laws of 1945.

The Public Employees Retirement Act is more liberal in scope than is the present Workman's Compensation Act inasmuch as it makes provision for disability resulting from industrial diseases. The fact that the Legislature in Section 20 (h) designated the Industrial Accident Board as the Board to inquire into the fact of the origin of the disabling injury "or disease" clearly indicates a Legislative intention to add to the duties of the Industrial Accident Board this additional function. That

intention is made more apparent by the fact that the Industrial Accident Board is specifically called upon to determine whether or not a disease, which the Public Employees Retirement Board has certified as resulting in a disability, originated out of and in the course of employment.

It is therefore my opinion that the Industrial Accident Board has had added to its functions by Chapter 212, Session Laws of 1945, the additional task of determining the question of fact in cases certified to it under Section 20 (h) by the Public Employees Retirement Board.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.