CHAPTER 21

The South Carolina Retirement Systems Claims Procedures Act

Editor’s Note

2008 Act No. 311, Section 55, provides as follows:

“Upon the effective date of this act, Regulations 19‑900 through 19‑997 of the South Carolina Code of Regulations shall have no application whatsoever to the operation of Title 9 of the 1976 Code.”

**SECTION 9‑21‑10.** Title.

 This chapter may be cited as the “South Carolina Retirement Systems Claims Procedures Act”.

HISTORY: 2003 Act No. 12, Section 1, eff July 1, 2003.

Editor’s Note

2003 Act No. 12, Section 4, provides as follows:

“This act takes effect on the later of July 1, 2003, or the effective date of procedures adopted by the State Budget and Control Board pursuant to the requirements of Chapter 21, Title 9 of the 1976 Code as added by this act and applies for disputes arising on or after that date.”

**SECTION 9‑21‑20.** Definitions.

 As used in this chapter:

 (1) “Administrative Law Court” means the Administrative Law Court created pursuant to Section 1‑23‑500.

 (2) “Board” means the Board of Directors of the South Carolina Public Employee Benefit Authority.

 (3) “Claimant” means a member or a member’s designated beneficiary who has filed a claim pursuant to this chapter.

 (4) “Director” means the Director of the South Carolina Retirement System, the South Carolina Police Officers System, the Retirement System for Members of the General Assembly, the Retirement System for Judges and Solicitors, and the National Guard Retirement System.

 (5) “Exhaustion of agency remedy” means that the member has:

 (a) filed a timely claim pursuant to Section 9‑21‑50 containing the information required pursuant to that section;

 (b) participated in the agency claims procedure established by the board; and

 (c) obtained a final retirement system decision.

 (6) “Member” means a participant in the South Carolina Retirement System, the South Carolina Police Officers System, the Retirement System for Members of the General Assembly, the Retirement System for Judges and Solicitors, the State Optional Retirement Program, the National Guard Retirement System, or a person claiming the status and entitlements of a “member”.

 (7) “Member’s designated beneficiary” or “ beneficiary” means a person designated by a participant in the South Carolina Retirement System, the South Carolina Police Officers System, the Retirement System for Members of the General Assembly, the Retirement System for Judges and Solicitors, or the State Optional Retirement Program, to receive a benefit from the retirement systems or a person claiming the status and entitlements of a “member’s designated beneficiary”.

 (8) “South Carolina Retirement Systems” or “ retirement systems” means the division of the board administering the South Carolina Retirement System, the South Carolina Police Officers System, the Retirement System for Members of the General Assembly, the Retirement System for Judges and Solicitors, the State Optional Retirement Program, or the National Guard Retirement System.

HISTORY: 2003 Act No. 12, Section 1, eff July 1, 2003; 2005 Act No. 155, Section 3, eff January 1, 2006; 2012 Act No. 278, Pt IV, Subpt 2, Section 60, eff July 1, 2012.

Code Commissioner’s Note

Pursuant to the directive in 2004 Act No. 202, Section 3, at the direction of the Code Commissioner, reference to “Administrative Law Judge Division” was changed to “Administrative Law Court”.

Editor’s Note

2003 Act No. 12, Section 4, provides as follows:

“This act takes effect on the later of July 1, 2003, or the effective date of procedures adopted by the State Budget and Control Board pursuant to the requirements of Chapter 21, Title 9 of the 1976 Code as added by this act and applies for disputes arising on or after that date.”

Effect of Amendment

The 2005 amendment, in items (4), (6), (7) and (8), added the references to the State Optional Retirement Program and the National Guard Retirement System.

The 2012 amendment substituted “Board of Directors of the South Carolina Public Employee Benefit Authority” for “State Budget and Control Board” in subsection (2).

**SECTION 9‑21‑30.** Scope of chapter; exclusive remedy.

 This chapter applies to a controversy or dispute between a member or a member’s designated beneficiary and the retirement systems which arises pursuant to or by virtue of any of the provisions of this title. The procedures set forth in this chapter constitute the exclusive remedy for a dispute or controversy between the retirement systems and a member or a member’s designated beneficiary arising pursuant to or by virtue of Title 9 of the Code of Laws of South Carolina, 1976. A claim presenting a dispute or controversy arising pursuant to or by virtue of this title must be resolved in accordance with the procedures and provisions provided in this chapter.

HISTORY: 2003 Act No. 12, Section 1, eff July 1, 2003.

Editor’s Note

2003 Act No. 12, Section 4, provides as follows:

“This act takes effect on the later of July 1, 2003, or the effective date of procedures adopted by the State Budget and Control Board pursuant to the requirements of Chapter 21, Title 9 of the 1976 Code as added by this act and applies for disputes arising on or after that date.”

Notes of Decisions

Exhaustion of remedies 1

1. Exhaustion of remedies

Employees were not required to exhaust administrative remedies under Retirement Act prior to filing declaratory judgment action seeking determination that South Carolina Law Enforcement Division’s (SLED) reduction of their salaries violated statute governing the police retirement system; administrative remedies provided by the Retirement Act required an administrative decision by a retirement system, and instant dispute was between employees and employer. Grimsley v. South Carolina Law Enforcement Div. (S.C. 2012) 396 S.C. 276, 721 S.E.2d 423, on remand 2012 WL 6057386. Declaratory Judgment 44

**SECTION 9‑21‑40.** Who may prosecute claim.

 A claim brought pursuant to this chapter must be prosecuted by the member or the member’s designated beneficiary, respectively, or by an attorney authorized by the member or the designated beneficiary, respectively. A member or member’s designated beneficiary may not bring a claim under this chapter as a representative of any other member or any other member’s designated beneficiary unless acting as the guardian ad litem for the real party in interest. A claim may not be prosecuted on behalf of a class.

HISTORY: 2003 Act No. 12, Section 1, eff July 1, 2003.

Editor’s Note

2003 Act No. 12, Section 4, provides as follows:

“This act takes effect on the later of July 1, 2003, or the effective date of procedures adopted by the State Budget and Control Board pursuant to the requirements of Chapter 21, Title 9 of the 1976 Code as added by this act and applies for disputes arising on or after that date.”

**SECTION 9‑21‑50.** Claims concerning administrative decisions; time for filing; contents; procedure for resolution; retroactive benefits; final decisions adverse to claimant.

 (A) A member or the member’s designated beneficiary shall file a claim concerning an administrative decision by the retirement systems arising pursuant to or by virtue of this title that adversely affects the personal interest of the member or the member’s designated beneficiary by the filing of a written claim with the director within one year of the decision by the retirement systems.

 (B) The written claim must set forth:

 (1) the name, address, and social security number of the member; and if brought by the member’s designated beneficiary, the name and social security number of the beneficiary;

 (2) the basis of the claimant’s dispute with the retirement systems;

 (3) a statement of facts supporting the claimant’s position;

 (4) a statement outlining the reasons for the claim, including any law or authority upon which the claimant relies; and

 (5) any other relevant information that the retirement systems may reasonably prescribe.

 (C) The retirement systems must resolve a claim filed pursuant to this chapter in accordance with the procedures established by the board. These procedures for review of claims must be adopted by the board in public session and made available to members. These procedures for dispute resolution adopted by the board must include and provide for an opportunity for the claimant to present the claim either in writing or in a conference, or both, before the issuance of a final agency determination. In addition, the procedures must provide for informing the claimant of the evidence or information that was relied upon by the retirement systems in making its final decision. Notwithstanding any other provision of law, the procedures established by the board are not governed by either Article 1 or 3 of Chapter 23 of Title 1.

 (D) A claimant is not entitled to receive retroactive retirement benefits or any other monetary relief for a period that exceeds one year from the date of the filing of the claim under this chapter.

 (E) The retirement systems must make a determination concerning the claim at the conclusion of the internal agency process.

 (F) A retirement system’s final decision that is adverse to the claimant must be in writing and must:

 (1) be sent by mail to the address provided the retirement systems by the claimant or delivered to the claimant;

 (2) explain the basis of the retirement systems’ decision; and

 (3) inform the claimant of the claimant’s right to file an appeal with the Administrative Law Court.

HISTORY: 2003 Act No. 12, Section 1, eff July 1, 2003.

Code Commissioner’s Note

Pursuant to the directive in 2004 Act No. 202, Section 3, at the direction of the Code Commissioner, reference to “Administrative Law Judge Division” was changed to “Administrative Law Court”.

Editor’s Note

2003 Act No. 12, Section 4, provides as follows:

“This act takes effect on the later of July 1, 2003, or the effective date of procedures adopted by the State Budget and Control Board pursuant to the requirements of Chapter 21, Title 9 of the 1976 Code as added by this act and applies for disputes arising on or after that date.”

**SECTION 9‑21‑60.** Review by Administrative Law Court.

 Upon exhaustion of the agency remedy set out in this chapter, a claimant may seek review of the retirement systems’ final decision by filing a request for a contested case hearing with the Administrative Law Court within thirty calendar days after the claimant receives the retirement systems’ final decision. The Administrative Law Court must review the decision of the retirement systems de novo in accordance with its rules of procedure. If a claimant requests consideration by the Administrative Law Court before having exhausted the claimant’s agency remedy, the Administrative Law Court must dismiss the request without prejudice.

HISTORY: 2003 Act No. 12, Section 1, eff July 1, 2003.

Code Commissioner’s Note

Pursuant to the directive in 2004 Act No. 202, Section 3, at the direction of the Code Commissioner, reference to “Administrative Law Judge Division” was changed to “Administrative Law Court”.

Editor’s Note

2003 Act No. 12, Section 4, provides as follows:

“This act takes effect on the later of July 1, 2003, or the effective date of procedures adopted by the State Budget and Control Board pursuant to the requirements of Chapter 21, Title 9 of the 1976 Code as added by this act and applies for disputes arising on or after that date.”

**SECTION 9‑21‑70.** Appeals to court of appeals.

 A claimant may appeal a final decision of the Administrative Law Court in a case brought pursuant to this chapter to the court of appeals pursuant to Section 1‑23‑380 and the South Carolina Appellate Court Rules. If a claimant brings an action covered by this chapter in the court of common pleas, the court must dismiss the case without prejudice.

HISTORY: 2003 Act No. 12, Section 1, eff July 1, 2003; 2006 Act No. 387, Section 10, eff July 1, 2006.

Editor’s Note

2003 Act No. 12, Section 4, provides as follows:

“This act takes effect on the later of July 1, 2003, or the effective date of procedures adopted by the State Budget and Control Board pursuant to the requirements of Chapter 21, Title 9 of the 1976 Code as added by this act and applies for disputes arising on or after that date.”

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

Effect of Amendment

The 2006 amendment rewrote this section to provided for appeal to the court of appeals rather than the Richland County Court of Common Pleas.