

1978 WL 34830 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 4, 1978

**\*1 RE: Evelyn T. Burdette, ARN-75998**

Purvis W. Collins  
Director  
South Carolina Retirement System  
Bankers Trust Tower  
P.O. Box 11960  
Capitol Station  
Columbia, South Carolina 29211

Dear Mr. Collins:

You have requested an opinion based on the following facts: A member of the Retirement System applied for disability retirement ([§ 9-1-1540, 1976 Code](#)) in October 1974. The application was disapproved due to insufficient evidence. The member has not worked subsequent to the above date.

In November 1977, the member applied, although she had not worked since 1974. You advised her that it would be necessary for her to prove to the Retirement System's Medical Board that she was disabled in 1974 (i.e., as of the time she ceased work) with a condition likely to be permanent. This conclusion was based on an opinion of this office dated May 29, 1952.

You have asked essentially, the following questions:

- (1) Would it be permissible to impose reasonable time limits on the submission of additional evidence of disability?
- (2) Should payments, if made, be retroactive to the date of the original application?

With respect to the first question, there is nothing in the statute to provide guidance as to what a reasonable time limit would be. However, there are other safeguards against the problems caused by the lack of a specified time period. First, the decision as to eligibility rests with the Medical Board, which need not and should not determine that a member is eligible unless the evidence is substantially stronger than it was when the case was first presented. Secondly, and in answer to the second question, the adverse effect of proving disability some time after an initial attempt at such proof has failed should fall on the member rather than the Retirement System. In other words, payments should not be retroactive, but should start only as of the date of proof of disability. The Retirement Act does not address this question, but it is the opinion of this Office that the member must bear the burden of his initial failure to prove disability.

Sincerely yours,

Kenneth P. Woodington  
Assistant Attorney General

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