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Opinion Number 03-0126

92-A-2-(n) RETIREMENT – Firefighters  
LSA-R.S. 11:215; 11:2253; 11:2258

Mr. Steven S. Stockstill  
Firefighter's Retirement System  
P.O. Box 94095  
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Member of the Firefighters' Retirement System who became injured while he was a member, but who was then absent from service for more than eighteen months, has ceased to be member of the retirement system, and is no longer eligible to apply for disability benefits.

Dear Mr. Stockstill:

Reference is made to your request for an opinion of this office, on behalf of the Firefighter's Retirement System ("FRS") Board of Trustees, regarding the eligibility of former members of FRS for disability benefits. Specifically, you ask this office to address the following, with regard to a firefighter that you advise has less than five years of creditable service, and is not entitled to a deferred annuity:

"Where a member of this system becomes injured in an accident which prevents him from being further employed as a firefighter and where his employment as a firefighter is terminated because he is unable to perform his duties as a firefighter, and where he submits an application for FRS disability benefits based on that accident, but after being absent from service for a period of more than eighteen months, is the person considered a member for purposes of applying for disability benefits, or does R.S. 11:2253(B) render such a person ineligible because his membership ceased after being absent from service for more than eighteen months?"

We have examined the laws pertaining to FRS, and in particular the provisions you have called our attention to, and find the following statutory provisions to be pertinent to your request:"

LSA-R.S. 11:215 pertinently provides:

**"A. A member who becomes disabled, and who files for disability benefits while in service,** and who upon medical examination and certification as provided for elsewhere in this Subpart, is found to be totally disabled solely as the result of injuries sustained in the performance of his official duties...shall be entitled to disability benefits under the provisions of R.S. 11:2258(B)." (Emphasis added).

With regard to membership, LSA-R.S. 11:2253 pertinently provides:

*"B. Should any member, after becoming a member, be absent from service for more than eighteen months and not be entitled to a deferred annuity as provided in this Chapter...he shall thereupon cease to be a member."* (Emphasis added).

You have also called our attention to LSA-R.S. 11:2258, which provides, with regard to the award of disability benefits, that such benefits shall be awarded to "eligible **members**".

Regrettably, we must advise that it is the opinion of this office that although members of the FRS who become injured while they are members are entitled to apply for disability benefits, the application must be timely made. Based upon the foregoing provisions of law, and in particular LSA-R.S. 11:2253(B), we are constrained to advise that a member of the Firefighters' Retirement System who became injured while he was a member, but who was then absent from service for more than eighteen months, has ceased to be a member of the retirement system, and is no longer eligible to apply for disability benefits.

We trust the foregoing to be of assistance. Please do not hesitate to contact this office if we can be of further assistance.

Yours very truly,

RICHARD P. IEYOUNG  
Attorney General

BY:   
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Assistant Attorney General

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