

Policy No. 7001	<b>Workers' Compensation Retirement Benefit Offset</b>	Date Approved 11.16.2017
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**A. Policy**

In computing accidental disability retirement benefit offsets, there will be a rebuttable presumption that any benefit or settlement payable under the Workers' Compensation Act will result in a complete offset of the member's accidental disability retirement allowance for the maximum compensable period allowed under the Act.

**B. Purpose**

1. Minimize Overpayment Risk. The presumption reduces the risk of retirement benefit overpayments caused by retroactive Workers' Compensation benefit payments, settlements, and noncompliance with Workers' Compensation requirements.
2. Administrative Efficiencies. The presumption eliminates the need to reconcile Workers' Compensation benefits and disability retirement benefits without clear evidence that the Workers' Compensation benefits are insufficient.

**C. Procedure**

1. Offset Retirement Benefit. NERS will presume all accidental disability retirement members are being fully compensated by Workers' Compensation for 500 weeks (10 years).
2. Notify Member. NERS will inform disability retirement members that their Workers' Compensation benefits are designed to fully compensate them for 500 weeks (10 years). Because they are being fully compensated by Workers' Compensation, their retirement benefit will be offset completely by the Workers' Compensation benefits, resulting in a retirement benefit of \$0.
3. Challenge Offset. Disability retirement members may challenge the presumption by submitting clear and convincing evidence of full compliance with Workers' Compensation and providing payment records showing all Workers' Compensation benefits paid.
4. Review Challenge. NERS will review the evidence and may reach out to Workers' Compensation to determine why the benefit is insufficient. If the evidence clearly shows that the salary average used in the Workers' Compensation calculation is resulting in Workers' Compensation benefits that do not fully offset the disability retirement benefit, then NERS will adjust the member's retirement benefit accordingly.

**D. Discussion**

Both the disability retirement calculation and Workers' Compensation calculation use a 66 2/3% multiplier. The primary distinction is that the Workers' Compensation calculation uses the average of recent earnings, whereas the NERS calculation uses the average of the member's three highest compensable years. Because the Workers' Compensation calculation uses recent earnings, the benefit is often equal to or greater than the retirement benefit.

**E. References**

1. Average final compensation means the average annual earnable compensation of a member for the three (3) years of creditable service during which his earnable compensation was highest [...]. Norfolk Code § 37-2(f).

2. The accidental disability retirement allowance shall consist of a pension which shall be equal of sixty-six and two-thirds (66 2/3) percent of the member's average final compensation. Norfolk Code § 37-65(b).
3. Any amounts...payable under [Workers' Compensation Act]...on account of any disability...arising out of and in the course of employment with the city shall be offset against...any benefits payable out of funds provided by the city under the provisions of this chapter. Norfolk Code § 37-77.
4. Should the board of trustees determine that a disability beneficiary...is engaged in a gainful employment, or [...] is able to engage in a gainful employment...the board of trustees may reduce his retirement allowance, including any supplements, to an amount which, together with the amount earnable by him, shall equal the amount established on January first of the year being considered. The reduction will be made in the year following the year in which the earnings excess occurs. Norfolk Code § 37-67(b).
5. [T]he employer shall pay...a weekly compensation equal to 66 2/3 percent of his average weekly wages, with a minimum not less than 25 percent and a maximum of not more than 100 percent of the average weekly wage of the Commonwealth as defined herein. In any event, income benefits shall not exceed the average weekly wage of the injured employee. Virginia Code § 65.2-500(A).