STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Larry Joe Crooks, Petitioner, v. South Carolina Budget and Control Board, South Carolina Retirement Systems, Respondent.	)	Docket No. 05-ALJ-30-0059-CC **ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

APPEARANCES: For Petitioner: Robert E. Hoskins, Esquire
For Respondent: Kelly H. Rainsford, Esquire and Sarah Major, Esquire.

INTRODUCTION

This matter is before the Administrative Law Court (ALC or Court) by way of the parties' cross Motions for Summary Judgment. On March 1, 2005, Larry Joe Crooks (Crooks or Petitioner) filed a request for a contested case hearing with this Court challenging the South Carolina Budget and Control Board (Board), South Carolina Retirement Systems' (SCRS) January 6, 2006 decision to deny him disability retirement benefits.[1] On May 23, 2005, Petitioner filed a Motion for Summary Judgment. On June 22, 2005, Respondent filed a response to Petitioner's Motion and filed its own Motion for Summary Judgment.

Pursuant to notice to the parties, a hearing was held before me on July 7, 2005 at the offices of the ALC in Columbia, South Carolina. Both parties appeared and presented oral argument. For the reasons set forth below, Petitioner's Motion for Summary Judgment is granted and Respondent's Motion for Summary Judgment is denied.

BACKGROUND

In preparation for a hearing on the merits, on April 21, 2005, the parties submitted the following "Stipulation of Facts" to the Court with documentation attached:

[1] The South Carolina Retirement Systems administers the various retirement systems in this state, including the South Carolina Retirement System for state and county employees who qualify, the Police Officers Retirement System (PORS), the South Carolina Retirement System for Judges and Solicitors, and the South Carolina Retirement System for Members of the General Assembly.

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1. Crooks worked for York County from May 1996 to November 2003 when he was terminated from employment.

2. Between May 1996 and November 2003, Crooks was a member of SCRS, the general retirement system managed by the retirement system.

3. As a member of SCRS, Crooks accrued approximately seven and a half years of service credit.

4. On July 28, 1997, Crooks was injured on the job.

5. As of November 3, 2003, Crook's employment with York County was terminated.

6. Crooks filed an application for disability retirement benefits on November 16, 2004.

7. On December 28, 2004, Crook's employer filed the Employer's Disability Employment Status Report indicating Crooks was terminated on November 3, 2003. (Crooks does not dispute the November 3, 2003 termination date.)

8. On January 6, 2005, the retirement system sent a letter to Crooks reporting that Crooks was ineligible to apply for disability retirement benefits because he was not "in service" at the time he filed his application for disability retirement benefits.

ISSUE

(2) Whether Crooks, a covered participant in the SCRS, was eligible, pursuant to the provisions of S.C. Code Ann. § 9-1-1540 (Supp. 2003), to file a claim more than a year after his employment ended for disability retirement benefits based upon an admitted on-the-job injury which resulted in permanent and total disability?

DISCUSSION

Summary Judgment Standard

"Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79, 81, 502 S.E.2d 78, 85 (1998). See also Rule 56(C), SCRCP. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn [therefrom] must be viewed in the light most favorable to the nonmoving party." Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998). A trial court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the

affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Wogan, et al v. Kunze, et al, Op. No. 4026 (S.C. Ct. App. filed September 26, 2005). Summary judgment should not be granted even when there is no dispute as to the evidentiary facts if there is dispute as to the conclusions to be drawn from those facts. Nelson v. Charleston County Parks & Recreation Comm'n, 362 S.C. 1, 605 S.E.2d 744 (Ct. App. 2004). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 376, 597 S.E.2d 181, 183 (Ct. App. 2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Regions Bank v. Schmauch, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct. App. 2003); see also Rife v. Hitachi Constr. Mach. Co., Ltd., 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005).

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The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003). Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 594 S.E.2d 455 (2004).

Principles of Statutory Interpretation

"The cardinal rule of statutory interpretation is to ascertain the intent of the legislature." State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002). A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Davis v. NationsCredit Fin. Servs. Corp., 326 S.C. 83, 484 S.E.2d 471 (1997). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. McClanahan v. Richland County Council, 350 S.C. 433, 567

S.E.2d 240 (2002). The determination of legislative intent is a matter of law. Charleston County Parks & Recreation Comm'n. v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995).

The legislature's intent should be ascertained primarily from the plain language of the statute. State v. Landis, 362 S.C. 97, 606 S.E.2d 503 (Ct. App. 2004). The language used should be given its plain and ordinary meaning without resort to subtle or forced construction to expand or limit the scope of the statute. Berkebile v. Outen, 311 S.C. 50, 426 S.E.2d 760 (1993). The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose. Mun. Ass'n of South Carolina v. AT&T Communications of Southern States, Inc., 361 S.C. 576, 606 S.E.2d 468 (2004). "Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy." South Carolina Farm Bureau Mut. Ins. Co. v. Mumford, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989). "The Court should not consider the particular clause being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law." State v. Gordon, 356 S.C. 143, 152, 588 S.E.2d 105, 110 (2003).

"Where a statute is ambiguous, the Court must construe the terms of the statute." Wade v. Berkeley County, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002). In construing a statute, the court looks to the language as a whole in light of its manifest purpose. Adams v. Texfi Industries, 320 S.C. 213, 464 S.E.2d 109 (1995). An ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of the law. State v. Hudson, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999).

The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. Brown v. South Carolina Dep't of Health and Environmental Control, et al; 348 S.C. 507, 560 S.E.2d 410 (2002) (citing Dunton v. South Carolina Bd. of Examiners in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)). Where the construction of the statute has been uniform for many years in administrative practice and has been acquiesced in by the General Assembly for a long period of time, such construction is entitled to weight, and should not be overruled without cogent reasons. Etiwan Fertilizer Co. v. South Carolina Tax Comm'n, 217 S.C. 354, 60 S.E.2d 682 (1950). While the Court typically defers to the Board's construction of its own regulation, where the plain language of the statute is contrary to the Board's interpretation, the Court will reject its interpretation. Brown, supra, at 415.

Relevant Statute and Position of the Parties

The parties agree to the facts relating to the issue before the Court. There is no dispute of the relevant facts or to the conclusions to be drawn from them. Furthermore, since both parties filed Motions for Summary Judgment, neither party is required to establish the absence of a genuine issue of material fact. Also, the Court does not find it necessary to make any further inquiry into the facts in order for it to apply the law. Accordingly, the disposition of this case by way of summary judgment is appropriate.

Essentially, at issue in this case is the meaning of the term "in service" in S.C. Code Ann. § 9-1-1540 (Supp. 2003). Section 9-1-1540, which sets forth the requirements to receive disability retirement benefits, reads in relevant part:

> Upon the application of a member in service or of his employer, a member in service on or after July 1, 1970, who has had five or more years of earned service or a contributing member who is disabled as a result of an injury arising out of and in the course of the performance of his duties regardless of length of membership on or after July 1, 1985, may be retired by the board not less than thirty days and not more than nine months next following the date of filing the application on a disability retirement allowance if the medical board, after a medical examination of the member, certifies that the member is mentally or physically incapacitated for the further performance of duty, that the incapacity is permanent, and that the member should be retired. (Emphasis added).

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Accordingly, a member of SCRS is eligible to apply for disability retirement benefits if:

(1) the member:
   a. has five or more years of earned service; or
   b. is a contributing member who is disabled as a result of an injury arising out of and in the course of the performance of the member's duties regardless of length of membership; and

(2) the application is made by:
   a. a member in service; or
   b. the employer of the member in service.

This statute authorizes a member to file and qualify for disability retirement benefits if the member has five or more years of qualified service. A member may receive these benefits due to any physical or mental condition, regardless of whether such was related to an on-the-job injury. Also, the statute allows a member, regardless of his time in service, to file and qualify for disability retirement benefits resulting from an on-the-job injury. In both cases the medical

condition (physical or mental) must permanently preclude the member from performing his previous job.

For a member to be eligible to apply for disability retirement benefits, the member must be "in service" at the time the application is made. Respondent argues that for a member to be considered "in service," the application for disability retirement benefits must be filed before the members employment ends or not later than ninety (90) days after the member is no longer on his employer's payroll in a paid or approved unpaid capacity. It argues that both these time frames for filing the application are applicable to members who qualify based upon an employment history of five years and those who qualify from a disability resulting from an on the job injury. Respondent explains that it derived the ninety (90) day grace period from the legislative definition of "in service" found in S.C. Code Ann. § 9-1-1770.[2] The ninety (90) day grace period is not contained in Section 9-1-1540.

Crooks, however, contends that the phrase "in service" only means that the member must have been injured during his employment. Therefore, according to Crooks, "in service" pertains to the date on which the disability occurs, not the date on which the application is made. He argues that the member is not limited by any statute of limitations to file the application. Thus, Crooks argues that he is eligible to file his application for disability retirement benefits more than one year after his termination because he was "in service" at the time his injury occurred.

Respondent's argument that the phrase "in service" means that an injured employee must file an application for disability retirement benefits before his employment ends presupposes that the member has been found disabled by his medical providers before his employment ends.

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[2] S.C. Code Ann. § 9-1-1770, which concerns the Preretirement Death Benefit Program, states in part:

> For purposes of this section, a member is considered to be in service at the date of his death if the last day the member was employed in a continuous, regular pay status, while earning regular or unreduced wages and regular or unreduced retirement service credit, whether the member was physically working on that day or taking continuous accrued annual leave or sick leave while receiving a full salary, occurred not more than ninety days before the date of his death and he has not retired.

However, Respondent's imposition of a ninety (90) day period based upon S.C. Code Ann. § 9-1-1770 is erroneous. Besides the fact that S.C. Code § 9-1-1770 deals with a completely different benefit than that in the matter sub judice, the ninety (90) day period referenced therein really involves quite a different factual situation then would be involved in taking an application for disability benefits. Section 9-1-1770 merely states that if a person dies within ninety (90) days of his last active day of employment (as opposed to "employment" alone) that the member will be considered to be "in service."

Furthermore, Respondent asserts that even if this Court were to determine that the phrase "in service" modified the time when the injury occurred and not when the application was filed, the member must be a "contributing" member when he files the application. Respondent construes the word "contributing" member as a member employed when he files the application. It is unquestioned that Crooks was a contributing member to SCRS when he was injured in the course of the performance of his duties with York County.

Respondent also argues that the main reason for the "in service" requirement is that disability retirement is an employment benefit and that such is provided only for members who are working for a covered employer and become incapacitated from further performing that work. It argues that the retirement is not available for a member who worked for a covered employer in the past and became disabled subsequent to termination of that employment. Respondent posits that having this requirement ensures that a relationship exists between the member and the State of South Carolina at or near the time the application for disability retirement benefits is made, and it argues that if the statute did not have this requirement, it would be difficult to determine whether an injury was job-related if that determination is not made until years after the member terminates employment.

Respondent further argues that another reason for its interpretation is that disability retirement benefits are specifically job-focused and that the determination of disability is based on whether the member can perform the particular job he held with a covered employer at the time he allegedly became disabled. Respondent asserts that its interpretation would ensure that evidence of medical conditions existing at the time the member allegedly became disabled is accurate and available to be analyzed to determine whether the member in fact was disabled from performing his particular job at the time he filed his application; otherwise, it becomes stale.

Written Policies Formulated by the Board

In support of its position regarding the meaning of the term "in service," Respondent submitted several of its brochures referring to disability retirement benefits applicable to members of both SCRS and Police Officers Retirement System (PORS) into the Record.[3] One brochure dated July 1, 1995 states that members of these retirement systems who become

[3] With leave of the Court, Respondent provided several brochures to the Court on August 16, 2005. The brochures were dated July 1, 1995 and July 2003. At the motions hearing, Crooks submitted SCRS' brochure dated January 2005 into the Record.

permanently disabled may apply for disability retirement any time prior to the member's last day on the payroll and up to ninety (90) days following the member's termination of employment. It further states that the application is valid for nine (9) months thereafter. Another brochure dated July 2003, provides that if a member is permanently disabled from the job, the member must apply for disability retirement before the member leaves covered employment. The latter does not provide a ninety (90) day "window" to file after employment is ended. The most recent brochure, dated January 2005, contains provisions similar to those in the July 2003 with regard to the time for filing an application.[4] Respondent avers that all these written documents are provided to or made available to all members in SCRS and PORS and that they constitute policy.

S.C. Code Ann. § 1-23-10(1) (2005) defines "agency" or "state agency" as meaning "each state board, commission, department, executive department or officer, other than the legislature, the courts...authorized by law to make regulations or to determine contested cases." Respondent is defined as a board in S.C. Code Ann. § 1-11-10 (1976). Furthermore, in S.C. Code Ann. § 9-1-290 (1976), our legislature authorized the Board to "establish rules and regulations for the administration of the System [SCRS] and the transaction of business" and to "adopt rules and regulations to prevent injustices and inequalities which might otherwise arise in the administration of the System."[5]

It is axiomatic that Respondent is an agency subject to this State's rule-making process contained in the Administrative Procedures Act (APA). See S.C. Code Ann. §§ 1-23-10 through 1-23-160 (2005). The APA requires the Respondent to implement its policy statements in regulations which are promulgated for review and comment by the public and for review by our General Assembly. Regulations are legislative or substantive rules and are binding upon those regulated by the agency. Pacific Gas & Electric Co. v. Federal Power Comm'n, 506 F.2d 33, 38 (D.C.Cir. 1974). A substantive rule is one which has a significant impact upon the existing rights and obligations of regulated parties, and has the force and effect of law such that the agency is no longer free to exercise its discretion in the application of the rule. American Bus Ass'n v. United States, 627 F.2d 525, 529 (D.C.Cir. 1980).

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[4] The January 2005 brochure is not applicable to Petitioner's claim.

[5] See also S.C. Code Ann. § 9-1-30(9), applicable to PORS, which provides that the Board may also "from time to time, establish rules and regulations for the administration of the System [PORS] and for the transaction of business."

"Regulation" is defined in S.C. Code Ann. § 1-23-10(4) (2005) as "each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency." Section 1-23-10(4) further states that "[p]olicy or guidance issued by an agency other than in a regulation does not have the force or effect of law." Our courts have held that administrative agencies may be authorized "'to fill up the details' by prescribing rules and regulations for the complete operation and enforcement of the law within its expressed general purpose." Heyward v. South Carolina Tax Comm'n, 240 S.C. 347, 355, 126 S.E.2d 15, 19-20 (1962). However, a regulation may only implement the law; it may not alter or add to a statute. Society of Professional Journalists v. Sexton, 283 S.C. 563, 324 S.E.2d 313 (1984).

In determining whether a rule should be promulgated as a regulation, courts look to the actions of the agency, not the label the agency gives. Columbia Broadcasting System, Inc. v. United States, 316 U.S. 407 (1942). Whether a particular agency proceeding announces a rule or a general policy statement depends upon whether the agency action establishes a "binding norm." Home Health Service, Inc. v. South Carolina Tax Comm'n, 312 S.C. 324, 440 S.E.2d 375 (1994). If the rule acts as a "binding norm" and gives the agency no discretion in its application, the rule is an invalidly enacted regulation. American Bus., supra at 529.

Respondent asserts that it has the authority to apply these "policies" to members of SCRS and PORS. As a creature of statute, a regulatory body [the Board] is possessed of only those powers expressly conferred or necessarily implied for it to effectively fulfill the duties with which it is charged. City of Rock Hill v. South Carolina Dep't of Health and Environmental Control, 302 S.C. 161, 394 S.E.2d 327 (1990). However, powers may not be implied which enlarge [the Board's] statutory authority, or which liberalize the policy underlying the statute on which they are based. Beard-Laney, Inc. v. Darby, 213 S.C. 380, 49 S.E.2d 564 (1948). Respondent does not have the power or authority to apply the "policies" contained in its brochures as a "binding norm" to all members of these retirement systems. They must be promulgated as a regulation to have the force and effect of law. Notwithstanding, the law is clear that they cannot be promulgated as regulations because it would impose new and substantive requirements beyond those embodied in Section 9-1-1540 by adding substantive provisions to the relevant statute, which cannot be done by regulation. Furthermore, the Court cannot consider any long-standing policy acquiesced to by our General Assembly because if it is invalid ab initio, such acquiescence does not make it valid. For these reasons, these policies

applicable to the time for filing an application are invalid and do not have the force and effect of law. See Captain's Quarters Motor Inn, Inc., v. South Carolina Coastal Council, 306 S.C. 488, 413 S.E.2d 13 (1991).[6]

Conclusion

As stated above, the Court finds that any written "policy" enunciated by the Respondent, as in its various brochures, which relate to its interpretation of the phrase "in service" as delineated in S.C. Code Ann. § 9-1-1540, does not have the force and effect of law. Furthermore, its policy which authorizes a ninety (90) day window after employment ends to file an application, based upon Section 9-1-1770, is invalid and without the force and effect of law. Accordingly the Court agrees with both parties that the interpretation of Section 9-1-1540 is properly before it without consideration of any policy enunciated by Respondent.[7]

The South Carolina Supreme Court, in Anderson v. South Carolina Retirement Systems, 278 S.C. 161, 293 S.E.2d 312 (1982), recognized the ambiguity of Section 9-1-1540. In that case, Lucille B. Anderson, a school teacher from Spartanburg County who was a member of SCRS, had a disability which began in June 1975. She filed a claim for disability benefits during 1975 while she was still employed; however, she failed to submit proof of her disability and the application was denied. Ms Anderson did not challenge this denial and did not work thereafter. In 1979, long after her employment had ended, Ms. Anderson filed a second application based on the same disability which occurred in 1975. SCRS found that she was continuously disabled from June 1975 upon a showing of an additional medical certificate and awarded disability retirement benefits to her from January 23, 1979 forward. However, SCRS denied benefits between the years 1975 and 1979. Ms. Anderson thereafter initiated an action to recover benefits for the period between 1975 and 1979. In Anderson, the Court addressed the definition of "in service" as delineated in Section 9-1-1540, noting that it may in some future case require inquiry and construction. It stated:

> The question of whether appellant was 'in service' at the time of her application is not here involved. Her first application was made in June 1975 while she was still

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[6] The Board is obviously aware of the procedures for promulgating regulations. See 23 S.C. Code Ann. Regs. §§ 19-900 through 19-929, which are applicable to SCRS.

[7] The Court is sympathetic to Respondent's position that it would be beneficial to it in processing applications if there was a fixed time for filing an application. However, it finds that a plain reading of the statute does not accord such. This Court must apply rules of construction in determining the meaning of the phrase "in service."

> employed. The second application, from which this appeal arises, was made about three years after she ceased work; but she was disabled at the time she terminated her service and, in fact, terminated her employment because of her disability. Whether the statute is to be construed as limiting the time for making application to the period when the applicant was actually employed or whether the language 'in service' is intended to only require that the employee must be employed or 'in service' when the disability occurs is not before us, for respondent concedes that, under the present facts, appellant's application was timely filed. No contention is made that the second application in 1979 was in anyway a revival or continuation of the first application in 1975. Therefore, since the first application was refused and no challenge made to its denial, we consider the present (second) application as a new or separate request for disability benefits. In this posture, we must consider appellant's right to receive disability payments from June 1975 (when disability began) as if no prior application had been made...The determination in 1979 that appellant's disability began in 1975 did not entitle her to receive benefits from that date, but only established her eligibility to apply, since her disability arose while 'in service' and continued to the 1979 application (Emphasis added).

Id. at 314.

In Anderson the Court cited a case from the State of New York. In Silson v. New York State Employees' Retirement System, 208 Misc. 59, 144 N.Y.S.2d 476 (1954), John E. Silson, was an employee of the State of New York and a member of the New York State Retirement System. He became physically incapacitated from the performance of his duties resulting from an on-the-job accident on August 31, 1950 while he was employed with the New York Department of Labor. Mr. Silson did not work after the date of his injury. He received workers' compensation benefits until August 12, 1953 and on January 13, 1954, he applied for disability retirement benefits. He was advised on January 16, 1954 that he was ineligible to apply because he was not "in service" on the date he applied. In that case, the court held that the words "in service" were intended to require that the injured employee must be in the service [employed] at the time he suffered the injury and not that he must be in service [employed] at the time he makes an application for disability benefits.

In Anderson, supra, the court stated that the filing of the application by Ms. Anderson three years after she ceased work was considered timely because she was disabled at the time she terminated her service. Like the claimants in Anderson and Silson, supra, Crooks' application

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was submitted after he terminated service. Crooks contends that his disability arose while he was employed and prior to his termination.[8]

Clearly, based upon the language of Section 9-1-1540 and the holding of our Supreme Court in Anderson, a member of the state retirement system who becomes disabled while employed ("in service") establishes the member's eligibility to apply for disability retirement benefits after the employment is ended. The Court found in Anderson that the filing of an application three years after the disability occurred was sufficient to establish the member's right to benefits.

Section 9-1-1540 was passed by our General Assembly to provide benefits to members of our retirement system who were injured or suffered disabilities. Our Courts have long recognized that similar statutory provisions codified under our worker's compensation laws which provide disability benefits for workers who suffer either physical injuries or illnesses are remedial statutes and are to be liberally construed.[9] Likewise, it is clear that Section 9-1-1540 is a remedial statute and accordingly was liberally construed by our Supreme Court in Anderson.[10]

It is clear that the proper rule of construction for the ambiguity in Section 9-1-1540 is that it must be liberally construed to accomplish its' beneficial purpose. Petitioner argued, and the Court agrees, that the "in service" requirement of Section 9-1-1540 should be read to apply to the date on which a person becomes disabled and not the date the application is to be made.[11] This holding is consistent with the nature of the disability retirement benefits.[12]

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[8] The issue of Crooks' disability is not before the Court and has never been substantively addressed by the Respondent. The only issue before the Court is whether the Respondent must consider Crooks' application for disability benefits on its merits as being timely made.

[9] "Compensation laws should be given a liberal construction in furtherance of the beneficent purpose for which they are enacted, and, if possible, so as to avoid incongruous or harsh results." Sligh v. Pacific Mills, 207 S.C. 316, 35 S.E.2d 713 (1945). The basic purpose of the Workmen's Compensation Act is inclusion, not exclusion, of employees. Pyett v. Marsh Plywood Corp., 240 S.C. 56, 124 S.E.2d 617 (1962).

[10] Since both South Carolina Worker's Compensation and the disability retirement laws are intended to protect injured state employees, the two statutes should be interpreted consistently, if possible, and liberally. See Anderson v. Federal Deposit Insurance Corp., 918 F.2d 1139 (4th Cir. 1990) (applying South Carolina law and holding "The court should, if possible, construe statutes harmoniously, this is especially true if statutes deal with the same subject matter, even if apparent conflict exist.") See also Fidelity & Casualty Insurance Company of New York v. Nationwide Insurance Company, 278 S.C. 332, 295 S.E.2d 783 (1982) ("In construing a statute, it is proper to consider Legislation dealing with the same subject matter.") In Stuckey v. State Budget and Control Board, 339 S.C. 397, 529 S.E.2d 706 (2000), our Supreme Court interpreted an ambiguity in a different statute of Title 9, noting that a liberal construction should be adopted in favor of those to be benefited.

[11] This Court further finds that by applying the "in service" requirement to the date of disability would eliminate most, if not all, of the inconsistency and arbitrariness that currently exists. For instance, if a member suffers a disabling injury which prevents him from returning to his job, then the member's rights to file an application vest upon occurrence of the disability and the member would not be subject to his employer's whims as

In conclusion, the Court holds that the "in service" language of Section 9-1-1540 pertains to the date on which the disability occurs and not to the date on which an application must be made.

ORDER

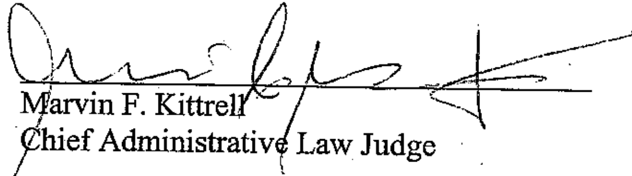
Based on the foregoing,

IT IS HEREBY ORDERED that Respondent's Motion for Summary Judgment is denied; and

IT IS FURTHER ORDERED that Petitioner's Motion for Summary Judgment is granted; and

IT IS FURTHER ORDERED that Respondent process Crooks' application for disability retirement benefits on its merits as if it was timely filed.

AND IT IS SO ORDERED.



Marvin F. Kittrell
Chief Administrative Law Judge

October 31, 2005
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 31st day of October 2005
By: Brigitte M. Baker
Judicial Law Clerk

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to what date the member is terminated from employment. It goes without saying that any person who suffers an injury that is potentially permanently disabling has suffered significant physical harm.

[12] Respondent may be concerned that this order would allow a slew of individuals to file claims for disability retirement benefits years after going out of work. However, such a concern is easily addressed by SCRS requesting the General Assembly to put in some time limitation for filing claims such as other states have done. For example, California has a time limitation of four months after discontinuance of service and Virginia has a time limitation of 90 days after termination of service. Such would provide uniformity and alleviate concerns of claims being filed years after a member left employment.