§ 363-e. Disability retirement allowance for members of the division of law enforcement in the department of environmental conservation and the regional state park police.

a. Every non-seasonally appointed sworn member or officer of the division of law enforcement in the department of environmental conservation and the regional state park police who becomes physically or mentally incapacitated for the performance of duty shall be covered by the provisions of this section in lieu of the provisions of section three hundred sixty-two of this article; except, however, any such member or officer who last entered or reentered service in the department of environmental conservation or state park police, as the case may be, prior to September first, nineteen hundred ninety-seven, shall be entitled to apply for disability retirement pursuant to such sections and to receive the benefit so payable in lieu of the benefit payable pursuant to this section.

b. Eligibility. A member or officer shall be entitled to a disability retirement allowance under this section if, at the time application therefor is filed, he/she is:

1. Under age sixty, and

2. (a) Physically or mentally incapacitated for performance of duty as the natural and proximate result of a disability not caused by his/her own willful negligence sustained in such service and while actually a member of the police and fire retirement system, or
(b) Physically or mentally incapacitated for performance of duty as a result of a disability that was not sustained in such service, and has at least five years of total service credit in the division, and

3. Actually in service upon which their membership is based, or, have been discontinued from service, either voluntarily or involuntarily for not more than ninety days provided the member was disabled prior to such discontinuance, or is a vested member incapacitated as a result of a qualifying World Trade Center condition as defined in section two of this chapter. However, in a case where a member is discontinued from

service, either voluntarily or involuntarily, subsequent to sustaining a disability in such service, application may be made not later than two years after the member is discontinued from service and provided that the member meets the requirements of this subdivision and subdivision a of this section.

c. Application. Application for a disability retirement allowance under this section may be made by:

1. Such member, or

2. The commissioner of the department of environmental conservation or the office of parks, recreation and historical preservation, as the case may be or his designee, or

3. A person acting on behalf of and authorized by such member.

d. Verification of disability. After the filing of such an application, such member shall be given one or more medical examinations. If the comptroller determines that the member is physically or mentally incapacitated for the performance of duty pursuant to subdivision b of this section and ought to be retired, he/she shall be so retired. Such retirement shall be effective as of a date approved by the comptroller.

e. Upon retirement pursuant to this section one of the following retirement allowances shall be payable:

1. If a member has completed twenty-five or more years of creditable service and is eligible for service retirement his retirement allowance shall be equal to that which he would have received in the case of service retirement.

2. If a member is not eligible for a service retirement as specified in paragraph one of this subdivision, his retirement allowance shall consist of:

(a) An annuity which shall be the actuarial equivalent of the member's

accumulated contributions attributable to service rendered prior to January first, nineteen hundred eighty-seven as provided pursuant to paragraph one of subdivision d of section three hundred eighty-three-a, or paragraph one of subdivision f of section three hundred eighty-three-b of this article, as the case may be, plus

(b) A pension which together with such annuity provides an allowance equal to one-half of his final average salary.

f. If the member, at the time of the filing of an application under the provisions of subdivision c of this section, is eligible for a service retirement benefit, then and in that event, he may simultaneously file an application for service retirement in accordance with the provisions of section three hundred eighty-three-a or three hundred eighty-three-b of this article, as the case may be, provided that the member indicates on the application for service retirement that such application is filed without prejudice to the application for the disability retirement allowance under this section.

g. Any benefit provided pursuant to this section shall not be considered as an accidental disability benefit within the meaning of section three hundred sixty-four of this article. Any benefits payable pursuant to the workers' compensation law to a member or officer receiving a disability allowance pursuant to this section shall be in addition to such disability allowance under this section, provided, however, that in the event the disabled retired member is also entitled to disability benefits under the federal social security act, and the sum of the disability retirement allowance, supplemental retirement allowance, workers' compensation benefit, and the primary social security disability insurance benefit exceeds final salary, as defined in subdivision e of section four hundred two of this article, that portion of the pension which increases the combined benefit above final salary shall be suspended for the duration of the period that the combined benefit would so exceed final salary.