extent of the effectiveness of that portion of clause (m) of the statute and would not broaden the unambiguous language contained in clause (k) of said section of the statute.

I am therefore of the opinion that under said statute as it now exists service credits for years in which disability benefits were received are limited to the 2½ years next preceding the completion of thirty years of service credit. In other words a person who has twenty-seven and one-half years of service credit and then goes on disability and received disability benefits may by complying with the provisions of the Act request service credits for the last 2½ years necessary to make her thirty years service credits toward retirement. Disability prior to that period of time cannot be counted to retirement.

OFFICIAL OPINION NO. 68

October 30, 1950.

Dr. D. W. Connor,
Secretary, Treasurer,
Indiana State Board of Registration,
and Examination in Optometry,
206 Merchants Bank Building,
Terre Haute, Indiana.

Dear Sir:

Your request of October 18, 1950, has been received and is as follows:

"Will you please furnish to the Indiana State Board of Registration and examination in Optometry an official opinion on the following facts and the question based thereon.

"In 1911 an individual, following application and examination, was issued a certificate to practice optometry in the State of Indiana, said individual thereafter securing license and practicing in the State of Indiana.

"In the year 1928 the said individual was convicted in the U. S. District Court for the Southern District
1950 O. A. G.

of Indiana of conspiracy to violate the National Motor Vehicle Theft Act, being a violation of Section 27 of the U. S. Criminal Code, and on November 24, 1928, the individual was sentenced to imprisonment in the U. S. penitentiary at Leavenworth, Kansas, for a term of two years.

"Thereafter pursuant to the Indiana Statute, a charge was filed with the Indiana State Board of Registration and Examination in Optometry, setting forth that the individual had been found guilty of committing a felony and had been sentenced to the U. S. penitentiary. Following due notice to the individual, a hearing was held in proper form by the Indiana Board, evidence was heard and a finding was entered that the charges were sustained. In accordance with the finding, the individual's certificate and license were thereupon revoked and cancelled.

"Subsequently the individual was released from the Federal penitentiary on July 27, 1929, and discharged from all custody on July 8, 1930. A pardon was issued to him by the President of the United States on January 21, 1933, restoring his civil rights.

"Will you please advise whether the granting of the Presidential pardon in itself on the basis of the foregoing facts has the effect of automatically reinstating the right to practice so as to make it mandatory for the Indiana State Board of Registration and Examination in Optometry to issue a new certificate to practice."

Section 63-1018, Burns 1943 Replacement, being Section 17, Chapter 187, Acts 1907, as amended by Section 10, Chapter 38, Acts 1935, same being a section of the Optometry Licensing Statute in this State, in part provides as follows:

"Said board shall have the power to revoke any certificate of registration of any person and/or revoke any license to practice optometry of any person, who has been found guilty of the violation of any of the provisions of this act, or of any of the rules, orders or regulations established and promulgated by the said board, or who has been convicted of a felony, or of a
misdemeanor involving moral turpitude, or for gross immorality, or who is found by the board to be grossly incompetent, or who is found by the board to be addicted to the use of intoxicating liquors or drugs or the use of narcotics to such degree as to render him unfit to practice optometry, or who is guilty of unprofessional conduct. * * *"

"* * * Where the certificate of registration of any person has been revoked, or his license has been revoked as herein provided, the board may, after the expiration of one (1) year, entertain an application for a new certificate, in like manner as original applications for certificates are entertained. * * *"

The effect of an unconditional pardon on the status of a professional license that has been revoked by the State has been fully considered in the many cases set out and referred to in the following references:

State of Washington v. Linda Burfield Hazzard (1926), — Wash. —, 247 Pac. 957, 47 A. L. R. 538;
Anno: 47 A. L. R. 542;
46 C. J. "Pardons" Section 38, p. 1196;
Re: John L. Stephenson (——), — Ala. —, 10 So. (2d) 1, 143 A. L. R. 166;
Anno: 143 A. L. R. 172.

In the foregoing authorities it is held that by the decided weight of authorities a person convicted of a criminal offense, whose license to practice his profession was revoked because of such conviction, does not have such license restored to him from the granting of an unconditional pardon, although such pardon purports to restore all the rights and privileges forfeited by the conviction. That the affect of a pardon is limited, also see: Sanders v. State (1882), 85 Ind. 318, 322.

In the case of Re: Stephenson, supra, it was held that where there has been a final adjudication of revocation of such license the clear remedy of such person, after pardon, would be to file a new application for a license. That it would not be automatically reinstated nor could an application be considered for a renewal of a license. Therefore, the general law
is consistent with the provision of our statute, supra, that after a final order of revocation such person must apply for a new certificate for a license, after one year, "in like manner as original applications for certificates are entertained."

I am, therefore, of the opinion that the granting of a presidential pardon in the above matter, on the basis of the facts presented, in and of itself would not have the effect of automatically reinstating the right to practice or make it mandatory for the Indiana State Board of Registration and Examination in Optometry to issue a new certificate to practice.

OFFICIAL OPINION NO. 69

November 8, 1950.

Hon. James M. Propst,
Auditor of State,
State of Indiana,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your request for an official opinion. Condensed, your question appears to be whether or not some person serving both as Judge pro tempore and special judge by appointment from the regular judge of a room of the Marion Superior Court is lawfully entitled to two days compensation when sitting and acting in the capacity of Judge pro tempore and special judge of such court on the same day of court. That is to say, can such person, while acting in such dual capacity on the same day, lawfully claim and receive compensation for more than one day.

It is noted that your question deals with judicial officers with limited powers. A judge pro tempore is limited by his appointment as to time, while the powers of the special judge are limited in scope. The Indiana Supreme Court, in State ex rel. Hodshire v. Bingham, Judge (1841), 218 Ind. 400, observed that:

"A judge pro tem is appointed for the term or some part thereof, during which time he exercises all the functions of the regular judge."