

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 076 – OPSRP DISABILITY BENEFIT**

1 **459-076-0001**

2 **Definitions**

3 The words and phrases used in this division have the same meaning given them in ORS
4 Chapter 238A and OAR 459-070-0001. Additional terms are defined as follows unless the
5 context requires otherwise.

6 (1) “Any work for which qualified” means a job, not necessarily the last or usual job,
7 which the applicant for disability benefits:

8 (a) Is physically and psychologically capable of performing; and

9 (b) Has, or may obtain with reasonable training, the knowledge, skills and abilities, to
10 perform the job.

11 (2) “Certified vocational consultant” means a person who satisfies the criteria set forth
12 under either of the following:

13 (a) A Master’s Degree in vocational rehabilitation, and one year of experience in
14 performing vocation evaluations or developing individualized return-to-work plans; or a
15 Bachelor’s Degree and two years of such experience. All degrees must have been earned at an
16 accredited institution; or

17 (b) Accredited as a Certified Rehabilitation Counselor (CRC) by the Commission on
18 Rehabilitation Counselor Certification; as a Certified Disability Management Specialist
19 (CDMS) by the Certification of Disability Management Specialists Commission; or a
20 Certified Vocational Evaluation Specialist (CVE) or a Certified Work Adjustment Specialist
21 (CWA) by the Commission on Certification of Work Adjustment and Vocational Evaluation
22 Specialists.

1 (3) “Confidential information” means information of a personal nature such that
2 disclosure would constitute an unreasonable invasion of privacy as defined by state law.

3 (4) “Date an application for a disability benefit is filed” means the receipt date as
4 determined pursuant to OAR 459-005-0220.

5 (5) “Date of disability” means the date an active member ceased to work because of
6 inability to perform any work for which qualified due to injury or disease.

7 (6) “Date of separation from service” means the later of: the last day worked or the last
8 day of paid leave with a PERS participating employer.

9 (7) “Date of termination” means the date a member terminates from employment such
10 that an employee/employer relationship no longer exists.

11 (8) “Earned income” includes, but is not limited to:

12 (a) Salary or wages received as an employee;

13 (b) Self-employment income from:

14 (A) Services industry;

15 (B) Sales;

16 (C) Assembly or manufacturing;

17 (D) Consulting;

18 (E) Property management;

19 (F) Hobby income; or

20 (G) Book advances.

21 (c) “Earned income” does not include:

22 (A) Investment income;

23 (B) Rent; and

24 (C) Royalties.

1 (d) Earned income is deemed to be received by the member on the date it is issued by the
2 payer.

3 (9) “Effective date of disability benefit” means the first day of the month following the
4 date of disability, in which:

5 (a) The member is paid no salary from a participating employer; and

6 (b) The member does not receive paid leave from a participating employer, except for
7 any lump sum payment for accrued vacation leave or compensatory time.

8 (10) “Extended duration” means a period of not less than 90 consecutive calendar days
9 unless the disability is expected to result in the death of the disabled member in less than 90
10 days.

11 (11) “Independent medical exam” means an exam or exams, including physical
12 capacity evaluations, conducted by a physician or other health practitioner chosen by
13 PERS for purposes other than for treatment which results in the issuance of a report or reports
14 based on those exams, giving an opinion regarding the claimed injury or disease.

15 (12) “Material contributing cause” means the efficient, dominant, and proximate cause of
16 the disability, without which the member would not be disabled.

17 (13) “Monthly salary” means salary as defined in ORS 238A.005 that is earned in the last
18 full calendar month of employment and includes a differential wage payment, as defined in
19 OAR 459-005-0001.

20 (a) Retroactive payments or payments made due to clerical errors, paid in accordance
21 with ORS 238A.005, are allocated to the period the salary was earned or should have been
22 earned.

23 (b) Payments of salary paid within 31 days of separation are allocated to the period the
24 salary was earned and should be considered as paid on the last date of employment.

1 (14) “Monthly salary received” means the greater of the salary paid for the last full
2 calendar month of:

3 (a) Employment before the date of disability; or

4 (b) Differential wage payments made before the date of disability. This subsection is
5 effective January 1, 2009.

6 (15) “Orthopedic specialist” means an orthopedist, orthopedic surgeon or physical
7 medicine and rehabilitation specialist.

8 (16) “Other health practitioner” means a treating provider who is properly licensed
9 or certified and is performing within the scope of his or her practice in accordance with
10 the law or standards established by the appropriate governing authority.

11 (17)~~(15)~~ “Performance of duty” means whatever an employee may be directed,
12 required or reasonably expected to do in connection with his or her employment, and not
13 solely the duties particular to his or her position.

14 (18)~~(16)~~ “Periodic review” means a review of a member receiving a disability benefit
15 to determine whether or not a continued benefit is warranted.

16 (19)~~(17)~~ “Physician” means a person who holds a degree of doctor of medicine,
17 doctor of osteopathy, doctor of podiatric medicine, or *[a medical doctor, a doctor of*
18 *osteopathy, a] doctor of oral surgery[, a chiropractic doctor, a naturopathic doctor, or a*
19 *doctor of psychology practicing only within the purview of their license issued by the*
20 *designated authority of a state]* and is licensed by law to practice medicine or surgery by
21 the designated authority of any state within the United States of America or the District
22 of Columbia. PERS may accept at its discretion a physician licensed by another country.

23 (20)~~(18)~~ “Pre-existing condition” means a condition that was not sustained in actual
24 performance of duty in a qualifying position with a participating employer.

1 (21)[(19)] “Protected health information” means health information created or received
2 by a health care provider, health plan, or health care clearinghouse, where an individual has a
3 reasonable belief that the information can identify the individual, which relates to:

- 4 (a) The past, present, or future physical or mental health of an individual;
- 5 (b) The provision of health care to an individual; or
- 6 (c) The past, present, or future payment for the provision of health care to an individual.

7 (22)[(20)] “Total disability” means the inability to perform any work for which qualified
8 for an extended duration due to physical or mental incapacitation.

9 (23)[(21)] “Vocational evaluation” means an evaluation conducted by a certified
10 vocational consultant, to determine the ability of an applicant to perform any work for which
11 they are qualified.

12 (24)[(22)] “Work related stress” means conditions or disabilities resulting from, but not
13 limited to:

- 14 (a) Change of employment duties;
- 15 (b) Conflicts with supervisors;
- 16 (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
- 17 (d) Relationships with supervisors, coworkers, or the public;
- 18 (e) Specific or general job dissatisfaction;
- 19 (f) Work load pressures;
- 20 (g) Subjective perceptions of employment conditions or environment;
- 21 (h) Loss of job or demotion for whatever reason;
- 22 (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
- 23 (j) Objective or subjective stresses of employment; or
- 24 (k) Personnel decisions.

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1 Stat. Auth.: ORS 238A.450

2 Stats. Implemented: ORS 238A.235