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

1 **459-076-0010**

2 **Criteria for Granting and Denying Disability Benefits**

3 (1) Medical documentation is required by PERS. Each disability benefit applicant
4 shall supply any treating or consulting physician’s examination report or other medical
5 information requested by PERS. PERS may base its determination on either a treating or
6 consulting physician’s medical examination report or have the applicant examined by one
7 or more physicians selected by PERS, or both.

8 (2) All claims of a disability must be supported by at least one physician’s report,
9 resulting from a physical examination, documenting how the injury or disease
10 incapacitates the member. **A physician assistant’s examination report will be accepted**
11 **as a physician’s report when signed by the supervising physician.**

12 (3) In addition, a disability benefit applicant shall be required to furnish the
13 following:

14 (a) For claims of mental or emotional disorder, at least one report of examination by
15 a psychiatrist or at least one report of evaluation by a psychologist when accompanied by
16 a report of physical examination by a treating or consulting physician;

17 (b) For claims of orthopedic injury or disease, at least one report of a treating or
18 consulting orthopedic specialist;

19 (c) For claims of neurological or neurosurgical injury or disease, at least one report
20 of a treating or consulting neurologist or neurosurgeon;

1 (d) For claims of fibromyalgia, at least one documented diagnosis by a
2 rheumatologist, and at least one report of a treating or consulting rheumatologist or
3 physical medicine and rehabilitation physician; and

4 (e) Any other specialized physician’s report PERS deems necessary.

5 (4) To demonstrate that he or she is unable to perform any work for which qualified,
6 as defined in OAR 459-076-0001(1), the applicant shall document how the injury or
7 disease incapacitates the applicant. The standard is subjective (that is, whether the
8 applicant is actually incapacitated) not objective (that is, whether a "normal" member
9 would have been incapacitated by the same events).

10 (a) In determining what work for which a member is qualified, the following factors
11 shall be considered:

12 (A) Previous employment experience;

13 (B) Formal education;

14 (C) Formal training;

15 (D) Transferable skills;

16 (E) Age; and

17 (F) Physical or mental impairment.

18 (b) In determining what work for which a member is qualified, PERS may request, at
19 PERS’ expense, a vocational evaluation be done by a vocational consultant who is fully
20 certified as set forth in OAR 459-076-0001(2).

21 (c) The inability of the applicant to perform the duties of his or her last job, in itself,
22 does not satisfy the criterion.

1 (5) When there are conflicting opinions*[is a dispute]* among physicians referenced
2 in section (3) *[medical experts]*, more weight will be given to those medical opinions
3 that are both well-reasoned and based on complete information.

4 (6) As supporting evidence, PERS will accept reports from other health
5 practitioners. When there are conflicting opinions among other health practitioners,
6 more weight will be given to those medical opinions that are both well-reasoned and
7 based on complete information.

8 (7)*[(6)]* The Board may deny any application or discontinue any disability benefit if
9 an applicant:

10 (a) Refuses to submit to an independent medical or vocational examination; or

11 (b) Refuses to submit to any medical examination or supply a completed application
12 or review form.

13 (8) Receipt of weekly unemployment insurance payments after the date of
14 disability is substantial evidence that the member is able, available, actively seeking
15 and willing to accept employment and is not totally and continuously disabled.

16 Stat. Auth.: ORS 238A.450

17 Stats. Implemented: ORS 238A.235