

**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) Gambling, other than income from sweepstakes, lotteries, bingo, keno, or slot**

20 **machines;**

21 ~~(F)~~**(G)** Hobby income; or

22 ~~(G)~~**(H)** Book advances.

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

24 (A) Investment income;

1 (B) Rent; and

2 (C) Royalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (16) “Periodic review” means a review of a member receiving a disability benefit to
12 determine whether or not a continued benefit is warranted.

13 (17) “Physician” means a medical doctor, a doctor of osteopathy, a doctor of oral
14 surgery, a chiropractic doctor, a naturopathic doctor, or a doctor of psychology practicing
15 only within the purview of their license issued by the designated authority of a state.

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

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

21 (a) The past, present, or future physical or mental health of an individual;

22 (b) The provision of health care to an individual; or

23 (c) The past, present, or future payment for the provision of health care to an individual.

1 (20) “Total disability” means the inability to perform any work for which qualified for an
2 extended duration due to physical or mental incapacitation.

3 (21) “Vocational evaluation” means an evaluation conducted by a certified vocational
4 consultant, to determine the ability of an applicant to perform any work for which they are
5 qualified.

6 (22) “Work related stress” means conditions or disabilities resulting from, but not limited
7 to:

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

19 Stat. Auth.: ORS 238A.450

20 Stats. Implemented: ORS 238A.235