

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

459-076-0005

Eligibility for Disability Benefits

(1) A member who was an active member as of the date of disability must be totally, not partially, disabled and unable to perform any work for which qualified for an extended duration to be eligible for a disability benefit.

(2) A member with disabilities arising after the member's date of termination from a qualifying position(s) is not eligible for a disability benefit.

(3) In determining a member's eligibility for disability benefits, the burden of proof is upon the applicant. The Board is not required to prove whether the applicant is or is not eligible for disability benefits.

(4) Eligibility requirements for duty disabilities.

(a) To be eligible for a duty disability a member must prove:

(A) The mental or physical incapacitation arose out of and in the course of duty and was not intentionally self-inflicted; and

(B) The on the job injury must be the material contributing cause of the disability, even if the member has a pre-existing condition.

(b) For work related stress to be considered the material contributing cause of the disability all of the following criteria must be met:

(A) The employment conditions producing the work related stress exist in a real and objective sense;

(B) The employment conditions producing the work related stress are conditions other than conditions generally inherent in every working

situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles;

(C) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community; and

(D) There is evidence that the work related stress arose out of and in the course of employment.

(c) If a member has been approved for a disability benefit under ORS 238A.235 and has also been approved for benefits under ORS Chapter 656 for the same injury or disease, when making the duty designation determination:

(A) PERS will consider it a rebuttable presumption that the member is eligible for duty disability;

(A) The presumption in (A) will be:

i. rebuttable with clear and convincing evidence;

ii. applicable to any payments made on or after the later of:

a. January 1 of the year in which the

documentation of the approval of benefits under

ORS Chapter 656 has been received by PERS or

b. effective date of disability retirement;

(B) The member is responsible for submitting documentation of approval for benefits under ORS Chapter 656 to PERS.

(5) Eligibility requirements for non-duty disabilities. A member applying for non-duty disability benefits must meet the 10 or more years of service requirements pursuant to ORS 238A.235(2)(a) or (b).

(6) Termination of OPSRP membership. Disability benefits are available only to OPSRP Pension Program members who have not terminated membership pursuant to ORS 238A.110.

(7) Return to work. If a member who is receiving a disability benefit becomes employed or receives earned income, the member's disability benefit will be terminated, effective the first of the month following employment or issuance of earned income. PERS will invoice the member for, or recover under ORS 238.715, any overpayment of benefits.

(8) PERS may contact other public or private agencies, such as the Oregon Employment Department, the Oregon Department of Revenue, or the U.S. Internal Revenue Service to obtain employment information.

(9) Upon request by PERS, a member must provide PERS with a copy of the member's federal income tax returns, together with copies of IRS forms W-2.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.235

Hist.: PERS 16-2005, f. & cert. ef. 10-3-05; f. & cert. ef. 10; f. & cert. ef. 11-23-11; f. & cert. ef. 12-3-21