

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 015 – DISABILITY RETIREMENT ALLOWANCE**

459-015-0005

Eligibility for Disability Retirement Allowances

(1) A member 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 retirement allowance.

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

(3) 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 retirement benefit under ORS 238.320 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;

(B) 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:

I. January 1 of the year in which the

documentation of the approval of benefits under

ORS Chapter 656 has been received by PERS or

II. Effective date of disability retirement;

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

(4) Eligibility requirements for non-duty disabilities. A member applying for non-duty disability retirement must have a minimum of 10 years of employment in a PERS

1 qualifying position. Years of employment are calculated pursuant to ORS 238.320(6) as
2 follows:

3 (a) Members with no prior service credit under ORS 238.442 receive:

4 (A) One year of employment for each 12-month period or major fraction
5 thereof, calculated from the date on which the member begins the six-
6 month waiting period required for establishing membership under ORS
7 238.015 to the date of disability; and

8 (B) Up to 90 days for sick leave used after the date of disability. No other
9 leave of absence after the date of disability will count toward years of
10 employment.

11 (b) Members with prior service credit under ORS 238.442 receive:

12 (A) One year of employment for each year of prior service credit; and

13 (B) One year of employment for any minor fraction of a year of prior service,
14 if continuous as certified by the employer and for which no prior service
15 credit was granted; and

16 (C) One year of employment for each 12-month period or major fraction
17 thereof, calculated from the date on which membership is established in
18 the system to the date of disability; and

19 (D) Up to 90 days for sick leave used after the date of disability. No other
20 leave of absence after the date of disability will county toward years of
21 employment.

22 (5) A member's disability retirement allowance shall be calculated based on:

23 (a) Creditable service; and

1 (b) Granted service if the member had not attained:

2 (A) Age 55 if the last qualifying position was as a police officer or a
3 firefighter.

4 (B) Age 58 if the last qualifying position was as other than a police officer or
5 firefighter.

6 (6) Granted service is:

7 (a) Not included in the calculation of increased benefits payable under ORS 238.364.

8 (b) Included in the calculation of increased benefits payable under ORS 238.366.

9 (7) Termination of membership. Disability retirement allowances are available only to
10 PERS members. Former PERS members who have terminated their membership pursuant
11 to ORS 238.095 are not eligible to receive PERS disability retirement allowances.

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13 Stat. Auth.: ORS 238.650

14 Stats. Implemented: ORS 238.320 - 238.345

15 Hist.: PERS 2-1992, f. & cert. ef. 1-14-92; PERS 15-2005, f. & cert. ef. 10-3-05; f. &
16 cert. ef. 5-28-2010; f. & cert. ef. 11-23-11; f. & cert. ef. 12-3-21