

**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) PERS shall determine eligibility for disability benefits based on an applicant's  
4 capacity and qualifications as set forth below.
- 5 (2) Medical documentation is required by PERS. Each disability benefit applicant  
6 shall supply any treating or consulting physician's examination report or other  
7 medical information requested by PERS. PERS may base its determination on  
8 either a treating or consulting physician's medical examination report or have the  
9 applicant examined by one or more physicians selected by PERS, or both.
- 10 (3) All claims of a disability must be supported by at least one physician's report,  
11 resulting from a medical examination, documenting how the injury or disease  
12 incapacitates the member. A physician assistant's examination report will be  
13 accepted as a physician's report when signed by a supervising physician who has  
14 examined the member.
- 15 (4) In addition, a disability benefit applicant shall be required to furnish the  
16 following:
- 17 (a) For claims of mental or emotional disorder, at least one report of a treating  
18 or consulting psychiatrist or doctor of psychology;
- 19 (b) For claims of orthopedic injury or disease, at least one report of a treating  
20 or consulting orthopedic or physical medicine and rehabilitation specialist;
- 21 (c) For claims of neurological or neurosurgical injury or disease, at least one  
22 report of a treating or consulting neurologist or neurosurgeon;
- 23 (d) For claims of fibromyalgia, at least one documented diagnosis by a  
24 rheumatologist, and at least one report of a treating or consulting  
25 rheumatologist or physical medicine and rehabilitation specialist; and
- 26 (e) Any other specialized physician's report PERS deems necessary.
- 27 (5) To demonstrate that *[he or she]* the member who was employed as other than a  
28 police officer or firefighter is unable to perform any work for which qualified or  
29 the member who was employed as a police officer or firefighter as defined in

1 ORS 238A.005 is unable to perform work the member performed at the time  
2 the member became disabled, as defined in OAR 459-076-0001~~[(1)]~~, the  
3 applicant shall document how the injury or disease incapacitates the applicant.  
4 The standard is subjective (that is, whether the applicant is actually incapacitated)  
5 not objective (that is, whether a "normal" member would have been incapacitated  
6 by the same events).

7 (a) For members who were employed as other than a police officer or  
8 firefighter, ~~[(In)] in~~ determining what work for which a member is  
9 qualified, the following factors shall be considered:

- 10 (A) Previous employment experience;
- 11 (B) Formal education;
- 12 (C) Formal training;
- 13 (D) Transferable skills;
- 14 (E) Age; and
- 15 (F) Physical or mental impairment.

16 (b) For members who were employed as a police officer or firefighter, in  
17 determining if the member is able to perform the work the member  
18 performed at the time they became disabled, the following factors  
19 shall be considered:

- 20 (A) The position description for the job the member held at the  
21 time of their injury or illness;
- 22 (B) Physical or mental impairment;
- 23 (C) Any other relevant personnel documentation.

24 ~~[(b)]~~ (c) In determining what work for which a member is qualified or to  
25 establish if a member can continue to perform work the member performed  
26 at the time the member became disabled, PERS may request, at PERS'  
27 expense, a vocational evaluation be done by a vocational consultant who is fully  
28 certified as set forth in OAR 459-076-0001(2).

29 ~~[(c)]~~ (d) For members who were employed as other than a police officer or  
30 firefighter, ~~[(The)] the~~ inability of the applicant to perform the duties of ~~[(his or~~

1        *her]* their last job, in itself, does not satisfy the “unable to perform any work  
2        for which qualified” criterion.

3        *[(d)]* (e) An applicant’s receipt of weekly unemployment insurance benefits after the  
4        date of disability shall create a rebuttable presumption that the member was able,  
5        available, and willing to perform any work for which qualified during the week for  
6        which the applicant received the benefits.

7        (6) When there is a dispute among medical experts, more weight will be given to  
8        those medical opinions that are both well-reasoned and based on complete  
9        information.

10       (7) The Board may deny any application or discontinue any disability benefit if an  
11       applicant:

12           (a) Fails to submit to an independent medical exam, physical capacity  
13           evaluation, or vocational evaluation; or

14           (b) Fails to submit to any medical examination or supply a completed  
15           application or review form.

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