



**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 459

**OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM**

**FILED**

09/25/2025 12:18 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Notice of Rulemaking to Implement Senate Bill 588 (2025)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/31/2025 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

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Filed By:  
Joel Mellor  
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HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 10/28/2025

TIME: 2:00 PM

OFFICER: Joel Mellor

IN-PERSON HEARING DETAILS

ADDRESS: PERS Headquarters Boardroom, 11410 SW 68th Parkway, Tigard, OR 97223

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 971-300-4342

CONFERENCE ID: 54886549

SPECIAL INSTRUCTIONS:

Meeting ID: 212 543 492 927 8

Passcode: vR74Cd6N

NEED FOR THE RULE(S)

The 2025 Oregon Legislature enacted several PERS-related bills which require rulemaking including SB 588 which has to do with Disability benefits. There are two areas that are impacted by SB 588: Disability Eligibility & Contested Case Timelines. The bill included an emergency clause and was effective on passage, May 27, 2025.

- Disability Eligibility for Police Officer and Firefighter (P&F) members, Generally

The bill redefines the disability eligibility standard for P&F members from a standard where members are considered disabled if they are “unable to perform any work for which qualified” to a standard where the member is considered disabled if they are “unable to perform the work the member performed at the time the member became disabled.”  
Emphasis added.

Under the new eligibility standard, P&F members are considered disabled if, due to their injury/condition, they cannot return to the P&F position they held at the time of their disability, regardless of their ability to perform any other work given their general health and qualifications. For example, a P&F member with a back injury who is no longer able to work as a firefighter would be considered disabled even if that member held a PhD and would be qualified and able to be employed as a researcher, a professor, or a policy analyst.

This change is applicable for both duty and non-duty disability cases and applies for disability retirements for Tier One/Tier Two members under ORS 238.320 as well as disability benefits provided to OPSRP members under ORS 238A.235.

- Disability Eligibility for OPSRP members, Generally

Traditionally, members receiving an OPSRP disability benefit were in jeopardy of losing their benefit if they received earned income in any amount. Prior to SB 588, disability benefits under ORS 238A.235 were paid until the member was no longer disabled, until the member reached normal retirement age under ORS 238A.160, or until the member retired on or after their earliest retirement date under ORS 238A.165. Over the years, the PERS Board had clarified in rule what constitutes “earned income” and tried to distinguish between allowable and not-allowable income that would impact a member’s benefit eligibility.

The Legislature has now expanded and clarified the conditions by which an OPSRP disability benefit under ORS 238A.235 will cease being paid. Under SB 588, a disability benefit will be paid until:

- The member is no longer disabled,
- The member returns to employment with any employer, including self-employment,
- The member receives earned income in any month in an irregular or unpredictable manner that exceeds 10 percent of the monthly salary of the member determined as of the last full month of employment before disability commenced,
- The member reaches normal retirement age under ORS 238A.160, or
- The member retires on or after the earliest retirement date under ORS 238A.165.

The bolded language above is new. The “irregular and unpredictable” language is an attempt to accommodate the rare situations when a disabled OPSRP member receives de minimis income due to things such as a stipend for volunteer work, or nominal winnings from playing poker.

- Contested Case Timelines for P&F Members

SB 588 provides that if a P&F member had requested a contested case hearing to dispute final denial of application for disability retirement under ORS 238.320 or a disability benefit under ORS 238A.235 and that hearing has not yet been referred for a hearing prior to the effective date of the bill (May 27, 2025), PERS must refer the case for hearing within 360 days (by May 22, 2026). If PERS fails to refer the P&F members’ cases for a contested case hearing by that time, the member prevails in their request for disability benefits under ORS 238.320 or 238A.235, respectively.

For contested case hearing requests submitted by P&F members to dispute final denial of application for disability retirement under ORS 238.320 or a disability benefit under ORS 238A.235 on or after the effective date of the bill (May 27, 2025), PERS must refer the case for hearing no later than 180 days after the member requested the hearing or no later than 360 days if the member requests an extension. If the case is not referred for a hearing within the specified time, the P&F member prevails in their request for disability benefits under ORS 238.320 or 238A.235, respectively.

## DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Senate Bill 588 (2025)

Available online at: <https://olis.oregonlegislature.gov/liz/2025R1/Downloads/MeasureDocument/SB0588/Enrolled>

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## STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

Adoption of the rule will not affect racial equity.

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## FISCAL AND ECONOMIC IMPACT:

There are no discrete costs attributable to the rules.

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## COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

None.

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## DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The rules do not affect small businesses and therefore small businesses were not involved in the development of the rules.

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## WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

A public hearing will be held and the PERS Board solicits input on rules from any interested or affected parties.

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## RULES PROPOSED:

459-001-0035, 459-015-0001, 459-015-0005, 459-015-0010, 459-015-0030, 459-015-0045, 459-076-0001, 459-076-0005, 459-076-0010, 459-076-0030

AMEND: 459-001-0035

RULE SUMMARY: Explain regulations for contested case hearings.

## CHANGES TO RULE:

459-001-0035

Contested Case Hearing ¶¶

(1) Request for a contested case hearing. To obtain review of any determination made under OAR 459-001-0030 or 459-001-0032 for which a contested case hearing has not been held, the party must file with the Board a request for a contested case hearing. The request must be filed within 45 days following the date of the Director's determination.¶¶

(2) Informal conferences. Informal conferences are available as an alternative means that may achieve resolution of any matter under review. A request for an informal conference does not relieve a person of the requirements for timely filing of a request for a contested case hearing.¶¶

(3) Criteria for request. The request for a contested case hearing must be in writing and set forth:¶¶

(a) A description of the determination for which review is requested;¶¶

(b) A short statement of the manner in which the determination is alleged to be in error;¶¶

(c) A statement of facts that are the basis of the request;¶¶

(d) Reference to applicable statutes, rules or court decisions upon which the requester relies;¶¶

(e) A statement of the action the request seeks; and¶¶

(f) A request for a hearing.¶

(4) The Director, or an administrator appointed by the Director, may direct the staff to schedule a formal contested case hearing or develop a recommendation to deny the member's request to be presented to the Board. The Board may ~~then~~ deny a request for a hearing when it has decided, in consultation with legal counsel, that the Board has no authority to grant the relief requested.¶

(5) Contested case hearings are referred to the Office of Administrative Hearings for a hearing pursuant to OAR 137-003-0515, unless the matter is resolved prior to the referral. The hearing must be conducted in accordance with the Attorney General's Model Rules of Procedure. Parties to the hearing will include the requester, any other person named as a party, and any other person who petitions to participate and is determined to have an interest in the outcome of the proceeding.¶

(6) The Board may deliberate and decide on final orders at any time and place allowed by law, as determined on a case-by-case basis, such as electronically or via a telephone conference.¶

(7) In contested cases where the agency is upholding the administrative law judge's proposed order, the Director or Deputy Director may issue the final order after the Board has had an opportunity for review.

Statutory/Other Authority: ORS 238.650, 183.464, 183.600 - 183.690

Statutes/Other Implemented: ORS 183.413 - 183.470

RULE SUMMARY: Disability Definitions

CHANGES TO RULE:

459-015-0001

Definitions ¶¶

The words and phrases used in this division have the same meaning given them in ORS Chapter 238 and OAR 459-005-0001. Additional terms are defined as follows unless the context requires otherwise.¶¶

(1) "Any work for which qualified" means a job, not necessarily the last or usual job, which the applicant for a disability retirement allowance:¶¶

(a) Is physically and psychologically capable of performing ; and¶¶

(b) Has, or may obtain with reasonable training, the knowledge, skills and abilities, to perform the job ¶¶

(2) "Certified vocational consultant" means a person who satisfies the criteria set forth under either of the following:¶¶

(a) A Master's Degree in vocational rehabilitation, and one year of experience in performing vocation evaluations or developing individualized return-to-work plans; or a Bachelor's Degree and two years of such experience. All degrees must have been earned at an accredited institution; or¶¶

(b) Accredited as a Certified Rehabilitation Counselor (CRC) by the Commission on Rehabilitation Counselor Certification; as a Certified Disability Management Specialist (CDMS) by the Certification of Disability Management Specialists Commission; or a Certified Vocational Evaluation Specialist (CVE) or a Certified Work Adjustment Specialist (CWA) by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists.¶¶

(3) "Confidential information" means information of a personal nature such that disclosure would constitute an unreasonable invasion of privacy as defined by state law.¶¶

(4) "Date an application for disability retirement is filed" means the receipt date as determined pursuant to OAR 459-005-0220.¶¶

(5) "Date of disability" means the later of:¶¶

(a) The date an active member ceased to work because of inability to perform any work for which qualified due to injury or disease; or¶¶

(b) The date an inactive member became unable to perform any work for which qualified provided such inability occurred within six months after the date of separation from service.¶¶

(6) "Date of separation from service" means the later of: the last day worked or the last day of paid leave with a PERS participating employer.¶¶

(7) "Date of termination" means the date a member terminates from employment such that an employee/employer relationship no longer exists.¶¶

(8) "Earned income" means income that includes, but is not limited to:¶¶

(a) Salary or wages received as an employee;¶¶

(b) Self-employment income from:¶¶

(A) Services industry;¶¶

(B) Sales;¶¶

(C) Assembly or manufacturing;¶¶

(D) Consulting;¶¶

(E) Property management;¶¶

(F) Gambling, other than income from sweepstakes, lotteries, bingo, keno, or slot machines;¶¶

(G) Hobby income; or¶¶

(H) Book advances.¶¶

(c) "Earned income" does not include:¶¶

(A) Investment income;¶¶

(B) Rent; and¶¶

(C) Royalties.¶¶

(d) Earned income is deemed to be received by the member on the date it is issued by the payer, except retroactive payments included in ORS 238.008 shall be deemed to be received by the member during the period for which the payment is allocated.¶¶

(e) Earned income includes the net profits of any business entity owned solely or jointly by a member and for which the member materially participates in the business, as defined by the Internal Revenue Service under 26 CFR 1.469-5T, as in effect on July 1, 2021.¶¶

(9) "Effective date of disability retirement" means the first day of the month following the date of disability in

which all of the following has been met:¶¶

(a) The member is paid no salary from a participating employer, and¶¶

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

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

(11) "Granted service" means that portion of creditable service used solely to calculate a disability retirement allowance under ORS 238.320 that is not performed or earned.¶¶

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

(13) "Material contributing cause" means the efficient, dominant, and proximate cause of the disability, without which the member would not be disabled.¶¶

(14) "Monthly salary" means "salary" as defined in ORS 238.005 that is earned in the last full calendar month of employment, and includes employer payments under ORS 238A.335 and differential wage payments as defined in OAR 459-005-0001.¶¶

(a) Retroactive payments or payments made due to clerical errors, paid in accordance with ORS 238.005, are allocated to the period the salary was earned or should have been earned.¶¶

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

(15) "Monthly salary received" means the greater of the monthly salary paid for the last full calendar month of:¶¶

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

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

(16) "Normal retirement age" means the age at which a member can retire without a reduced benefit as set forth under ORS 238.005 and 238.280.¶¶

(17) "Performance of duty" means whatever an employee may be directed, required or reasonably expected to do in connection with his or her employment, and not solely the duties particular to his or her position.¶¶

(18) "Periodic review" means a review of a member receiving a disability retirement allowance to determine whether or not a continued allowance is warranted.¶¶

(19) "Physical capacity evaluation" means a comprehensive and objective evaluation performed by a physician, physical therapist, or occupational therapist to determine a member's physical or functional capacity to perform work. The evaluation may include an analysis of the member's ability to perform a specified job based on a position description and the member's abilities or limitations. ¶¶

(20) "Physician" means a doctor of medicine, a doctor of osteopathy, a doctor of oral surgery, a chiropractic doctor, a naturopathic doctor, a doctor of podiatric medicine, or a doctor of psychology practicing only within the purview of their license issued by the designated authority of a state.¶¶

(21) "Pre-existing condition" means a condition that was not sustained in actual performance of duty in a qualifying position with a participating employer.¶¶

(22) "Protected health information" means health information created or received by a health care provider, health plan, or health care clearinghouse, where an individual has a reasonable belief that the information can identify the individual, which relates to:¶¶

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

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

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

(23) "Similar in compensation" means salary or other earned income, excluding overtime, equaling at least 80% of the monthly salary.¶¶

(24) "Total disability" means the inability to perform any work for which qualified for an extended duration due to physical or mental incapacitation.¶¶

(25) "Training or vocational rehabilitation program" means a comprehensive, coordinated program, usually state or federally funded, to train and assist individuals with disabilities in securing gainful employment commensurate with their abilities and capabilities.¶¶

(26) "Vocational evaluation" means an evaluation conducted by a certified vocational consultant, to determine the ability of an applicant to perform any work for which they are qualified.¶¶

(27) "Work related stress" means conditions or disabilities resulting from, but not limited to:¶¶

(a) Change of employment duties;¶¶

(b) Conflicts with supervisors;¶¶

(c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;¶¶

(d) Relationships with supervisors, coworkers, or the public;¶¶

(e) Specific or general job dissatisfaction;¶¶

- (f) Work load pressures;¶
- (g) Subjective perceptions of employment conditions or environment;¶
- (h) Loss of job or demotion for whatever reason;¶
- (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;¶
- (j) Objective or subjective stresses of employment; or¶
- (k) Personnel decisions.¶

(28) "Work the member performed at the time the member became disabled" means the duties and requirements of a member who was last employed as a police officer or firefighter as defined in ORS 238.005 at the time of disability.

Statutory/Other Authority: ORS 238.650

Statutes/Other Implemented: ORS 238.320 - 238.345

RULE SUMMARY: Eligibility for Disability Retirement Allowances

CHANGES TO RULE:

459-015-0005

Eligibility for Disability Retirement Allowances ¶¶

~~(1) A member~~ Eligibility Standards: ¶¶

~~(a) A member who was employed as other than a police officer or firefighter 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. ¶¶~~

~~(b) A member who was last employed as a police officer or firefighter as defined in ORS 238.005 must be unable to perform the work the member performed at the time the member became disabled for an extended duration to be eligible for a disability retirement allowance. ¶¶~~

~~(A) This standard applies to members applying for disability retirement benefits who were last employed in a qualifying position as a police officer or firefighter. ¶¶~~

~~(B) This standard is applicable for duty and non-duty disability retirement applications under ORS 238.320. ¶¶~~

~~(C) For members who are concurrently employed by two or more employers in qualifying positions as a police officer or firefighter and as other than a police officer or firefighter, the "work performed at the time the member became disabled" standard is the standard to be used in determining eligibility. The standard applies to the qualifying position worked as a police officer or firefighter member. ¶¶~~

~~(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~~ incapacitation 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~~ incapacitation 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 qualifying position. Years of employment are calculated pursuant to ORS 238.320(6) as follows: ¶¶~~

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

~~(A) One year of employment for each 12-month period or major fraction thereof, calculated from the date on which the member begins the six-month waiting period required for establishing membership under ORS 238.015~~



to the date of disability; and¶

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

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

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

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

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

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

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

(a) Creditable service; and ¶

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

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

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

(6) Granted service is: ¶

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

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

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

Statutory/Other Authority: ORS 238.650

Statutes/Other Implemented: ORS 238.320 - 238.345

RULE SUMMARY: Criteria for Granting and Denying Disability Retirement Allowances

CHANGES TO RULE:

459-015-0010

Criteria for Granting and Denying Disability Retirement Allowances ¶

- (1) PERS shall determine eligibility for disability retirement allowances based on an applicant's capacity and qualifications as set forth below. ¶
- (2) Medical documentation is required by PERS. Each disability retirement applicant shall supply any treating or consulting physician's examination report or other medical information requested by PERS. PERS may base its determination on either a treating or consulting physician's medical examination report or have the applicant examined by one or more physicians selected by PERS, or both. ¶
- (3) All claims of a disability must be supported by at least one physician's report, resulting from a medical examination, documenting how the injury or disease incapacitates the member. A physician assistant's examination report will be accepted as a physician's report when signed by a supervising physician who has examined the member. ¶
- (4) In addition, a disability retirement applicant shall be required to furnish the following: ¶
- (a) For claims of mental or emotional disorder, at least one report by a treating or consulting psychiatrist or doctor of psychology; ¶
- (b) For claims of orthopedic injury or disease, at least one report of a treating or consulting orthopedic or physical medicine and rehabilitation specialist; ¶
- (c) For claims of neurological or neurosurgical injury or disease, at least one report of a treating or consulting neurologist or neurosurgeon; ¶
- (d) For claims of fibromyalgia, at least one documented diagnosis by a rheumatologist, and at least one report of a treating or consulting rheumatologist or physical medicine and rehabilitation specialist; and ¶
- (e) Any other specialized physician's report that PERS deems necessary. ¶
- (5) To demonstrate that the member who was employed as other than a police officer or firefighter is unable to perform any work for which qualified or the member who was employed as a police officer or firefighter as defined in ORS 238.005 is unable to perform the work the member performed at the time the member became disabled, as defined in OAR 459-015-0001(4), the applicant shall document how the injury or disease incapacitates the applicant. The standard is subjective (that is, whether the applicant is actually incapacitated) not objective (that is, whether a "normal" member would have been incapacitated by the same events). ¶
- (a) For members who were employed as other than a police officer or firefighter, in determining what work for which a member is qualified, the following factors shall be considered: ¶
- (A) Previous employment experience; ¶
- (B) Formal education; ¶
- (C) Formal training; ¶
- (D) Transferable skills; ¶
- (E) Age; and ¶
- (F) Physical or mental impairment. ¶
- (b) In determining what work for which a member is qualified For members who were employed as a police officer or firefighter, in determining if the member is able to perform the work the member performed at the time they became disabled, the following factors shall be considered: ¶
- (A) The position description for the job the member held at the time of their injury or illness; ¶
- (B) Physical or mental impairment; and ¶
- (C) Any other relevant personnel documentation. ¶
- (c) In determining what work for which a member is qualified or to establish if a police officer or firefighter member can continue to perform work the member performed at the time the member became disabled, PERS may request, at PERS' expense, a vocational evaluation be done by a vocational consultant who is fully certified as set forth in OAR 459-015-0001(2). ¶
- (e) For members who were employed as other than a police officer or firefighter, the inability of the applicant to perform the duties of his or their last job, in itself, does not satisfy the "unable to perform any work for which qualified" criterion. ¶
- (de) An applicant's receipt of weekly unemployment insurance benefits after the date of disability shall create a rebuttable presumption that the member was able, available, and willing to perform any work for which qualified during the week for which the applicant received the benefits. ¶

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

(7) The Board may deny any application or discontinue any disability retirement allowance if an applicant: ¶¶

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

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

Statutory/Other Authority: ORS 238.650

Statutes/Other Implemented: ORS 238.320, ORS 238.335

AMEND: 459-015-0030

RULE SUMMARY: Regulations for contested cases.

CHANGES TO RULE:

459-015-0030

Hearings on Denial or Discontinuance of Disability Retirement Allowances ¶

(1) A final denial of an application for disability benefits, or any decision discontinuing a previously granted disability retirement allowance may be reviewed in a contested case hearing. ¶

(2) A contested case hearing may be requested by a member by filing with the Board a written request as provided for in OAR 459-001-0035. ¶

(3) For contested case hearing requests submitted by a member last employed as a police officer or firefighter as defined in OAR 238.005 to dispute the final denial of a disability retirement application under ORS 238.320:¶

(a) PERS must refer the case for contested case hearing no later than 180 days after PERS receives the member's request for hearing pursuant to OAR 459-005-0220, or, no later than 360 days after the member requests the hearing if the member requests an extension. ¶

(b) If a case is not referred for a hearing within the required timeline, the member prevails in disputing the final denial of the member's application under ORS 238.320. ¶

(c) Contested case hearing extension requests must be submitted to PERS in writing. ¶

(d) A member who is eligible for ORS 238 disability retirement benefits under ORS 238.320 due to operation of the default contested case deadlines remains subject to routine periodic reviews as provided for in OAR 459-015-0050. ¶

(4) For contested case hearing requests submitted by a member last employed as a police officer or firefighter as defined in OAR 238.005 to dispute the final denial of a disability retirement application under ORS 238.320:¶

(a) PERS must refer the case for contested case hearing no later than 180 days after PERS receives the member's request for hearing pursuant to OAR 459-005-0220, or, no later than 360 days after the member requests the hearing if the member requests an extension. ¶

(b) If a case is not referred for a hearing within the required timeline, the member prevails in disputing the final denial of the member's application under ORS 238.320. ¶

(c) Contested case hearing extension requests must be submitted to PERS in writing. ¶

(d) A member who is eligible for ORS 238 disability retirement benefits under ORS 238.320 due to operation of the default contested case deadlines remains subject to routine periodic reviews as provided for in OAR 459-015-0050. ¶

(4) The contested case hearing shall be heard before an administrative law judge designated by the Office of Administrative Hearings and conducted in accordance with the Attorney General's Model Rules of Procedure as adopted by OAR 459-001-0005. The member may represent ~~himself/herself~~themselves or be represented by legal counsel. An Assistant Attorney General will appear at the hearing to assist the staff in presenting its position, and to assist in the development of a complete hearing record. ¶

(4a) The Board ~~generally~~may deliberates and decides on final orders during regularly scheduled board meetings. The Board may instead deliberate and decide at any other time and place allowed by law, as determined on a case-by-case basis, such as electronically or via a telephone conference. ¶

(5b) In accordance with OAR 459-001-0040, before initiating any judicial review of a final order, an applicant may file with the Board a petition for reconsideration. ¶

(6c) Any disputed claim concerning a disability retirement allowance or discontinuance of such allowance may be voluntarily settled on a lump-sum basis subject to recommendation of the assigned Assistant Attorney General and final approval of the Board. Settlements approved by the Board shall be paid upon receipt of a "Release and Covenant Not to Sue" signed by the applicant and the applicant's attorney, if any.

Statutory/Other Authority: ORS 183.310 - 183.550, 183.600 - 183.690, 238.650

Statutes/Other Implemented: ORS 238.320 - 238.345

RULE SUMMARY: Regulations for returning to work after a period of disability.

CHANGES TO RULE:

459-015-0045

Return to Work ¶

(1) The Public Employees Retirement Board allows a member who is receiving a disability retirement allowance to return to work as follows:¶

(a) Returning to work in a PERS qualifying position. A member who ~~has not been medically released for any work for which qualified~~ was employed as other than a police officer or firefighter and who has not been medically released for any work for which qualified or a police officer or firefighter member who has not been deemed able to perform the work the member performed at the time they became disabled, may return to work in a PERS qualifying position, as defined by OAR 459-010-0003, for a 90-day trial period without losing disability retirement status. While the member is working during this trial period:¶

(A) The disability retirement allowance and supplemental benefits will be suspended.¶

(B) Any wages earned during the trial period are excluded from the definition of salary for purposes of computing PERS contributions or determining PERS retirement benefits unless the member continues the employment beyond 90 days. If the member continues beyond the 90 days, the period will be considered qualifying as of the first day the member returned to work and retroactive contributions, without interest, are required.¶

(b) Returning to work in a PERS non-qualifying position. A member who ~~has not been medically released for any work for which qualified~~ was employed as other than a police officer or firefighter and who has not been medically released for any work for which qualified or a police officer or firefighter member who has not been deemed able to perform the work the member performed at the time they became disabled, may return to work with a PERS participating employer in a position not qualifying for PERS active membership, as defined by OAR 459-010-0003. Unless the member has reached normal retirement age, the monthly disability retirement will be adjusted by any earned income issued during that month which, when added to the disability retirement allowance, exceeds the gross monthly salary earned at the date of disability.¶

(c) Returning to work in a non-PERS position. A member who ~~has not been medically released for any work for which qualified~~ was employed as other than a police officer or firefighter and who has not been medically released for any work for which qualified or a police officer or firefighter member who has not been deemed able to perform the work the member performed at the time they became disabled, may be employed by other than a PERS participating employer in a position that is not similar in compensation. Unless the member has reached normal retirement age, the monthly disability retirement allowance shall be adjusted by any earned income issued during that month which, when added to the disability retirement allowance, exceeds the gross monthly salary earned at the date of disability.¶

(d) If a member who was employed as other than a police officer or firefighter and is able to generate income that is similar in compensation for a period of three calendar months in six consecutive calendar months, PERS shall initiate a review under the periodic review standard in OAR 459-015-0050.¶

(2) ~~A member's disability retirement allowance~~ Termination of benefits due to medical documentation. ¶

(a) ~~The disability retirement allowance for a member who was employed as other than a police officer or firefighter~~ will be terminated if the member has been medically and psychologically released for any work for which qualified, whether the member returns to work or not, and PERS will invoice the member for, or recover under ORS 238.715, any overpayment of benefits. ¶

(b) ~~A police officer or firefighter member's disability retirement allowance will be terminated if determined, by one or more physicians selected by PERS, to be medically and psychologically able to perform the work the member performed at the time the member became disabled, whether the member returns to work or not, and PERS will invoice the member for, or recover under ORS 238.715, any overpayment of benefits.~~ ¶

(3) If a member returns to work as provided in sections (1) ~~or (2)~~ of this rule, the member must:¶

(a) Notify PERS in writing of the reemployment within 30 days of such reemployment; and¶

(b) Report monthly to PERS the amount of any earned income issued.¶

(4) 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.¶

(5) 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 and 1099. ¶

(6) The Board may require medical examination reports or vocational evaluations for any member receiving a disability retirement allowance who is reemployed.¶

(7) If the member is reemployed under section (1) of this rule and is unable to continue employment due to the

disabling injury or disease as confirmed by medical documentation, the member or employer must notify PERS. If medical documentation substantiates that the disability prevents the completion of the trial period, the disability retirement allowance will be reinstated at the end of the 90 day period, or as of the date the member leaves the trial employment, whichever is sooner.¶¶

(8) A disability retirement allowance shall not be discontinued solely by reason of the retired member entering a training or vocational rehabilitation program as defined in OAR 459-015-0001(24).¶¶

(9) Restoration of member account after return to work. If a member who was employed as other than a police officer or firefighter returns to work in a PERS qualifying position after the 90-day trial period described in section (1)(a) of this rule, or is medically released at any time for any work for which they are qualified, or a police officer or firefighter member has been deemed medically and psychologically able to perform the work the member performed at the time they became disabled, the disability claim will be closed.¶¶

(a) The member's regular and variable PERS account(s) will be restored to the dollar amount of the account as of the effective date of disability retirement. If a variable account transfer was elected at the time of disability retirement, the amounts transferred from the variable account to the regular account will remain in the regular account.¶¶

(b) Earnings crediting will resume as of the first of the month following the last month for which a disability retirement allowance was paid.¶¶

(10) Creditable service. A member does not receive creditable service while drawing a disability retirement allowance. If, however, the member returns to work for a PERS participating employer, their disability claim is closed, and they subsequently retire under a service retirement, service time for the period of disability will be restored as follows¶¶

(a) For duty disabilities, creditable service will be granted to the member at no cost to the member.¶¶

(b) For non-duty disabilities, creditable service may be purchased by the member under the provisions of ORS 238.175.¶¶

(11) For purposes of calculating retirement credit accrued under ORS 238.175, the period of disability for a member who receives workers' compensation payments under ORS Chapter 656 and later returns to work with a PERS participating employer shall be deemed to end upon the earlier of:¶¶

(a) The date on which the member's workers' compensation payments end; or¶¶

(b) The date on which the member returns to work with a PERS participating employer.

Statutory/Other Authority: ORS 238.650

Statutes/Other Implemented: ORS 238.175, 238.320 - 238.345, 238.715

RULE SUMMARY: OPSRP Disability Benefit Definitions

CHANGES TO RULE:

459-076-0001

Definitions ¶¶

The words and phrases used in this division have the same meaning given them in ORS Chapter 238A and OAR 459-070-0001. Additional terms are defined as follows unless the context requires otherwise.¶¶

(1) "Any work for which qualified" means a job, not necessarily the last or usual job, which the applicant for disability benefits:¶¶

(a) Is physically and psychologically capable of performing; and¶¶

(b) Has or may obtain with reasonable training, the knowledge, skills and abilities, to perform the job. ¶¶

(2) "Certified vocational consultant" means a person who satisfies the criteria set forth under either of the following:¶¶

(a) A Master's Degree in vocational rehabilitation, and one year of experience in performing vocation evaluations or developing individualized return-to-work plans; or a Bachelor's Degree and two years of such experience. All degrees must have been earned at an accredited institution; or¶¶

(b) Accredited as a Certified Rehabilitation Counselor (CRC) by the Commission on Rehabilitation Counselor Certification; as a Certified Disability Management Specialist (CDMS) by the Certification of Disability Management Specialists Commission; or a Certified Vocational Evaluation Specialist (CVE) or a Certified Work Adjustment Specialist (CWA) by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists.¶¶

(3) "Confidential information" means information of a personal nature such that disclosure would constitute an unreasonable invasion of privacy as defined by state law.¶¶

(4) "Date an application for a disability benefit is filed" means the receipt date as determined pursuant to OAR 459-005-0220.¶¶

(5) "Date of disability" means the date an active member ceased to work because of inability to perform any work for which qualified due to injury or disease.¶¶

(6) "Date of separation from service" means the later of: the last day worked or the last day of paid leave with a PERS participating employer.¶¶

(7) "Date of termination" means the date a member terminates from employment such that an employee/employer relationship no longer exists.¶¶

(8) "Earned income" includes, but is not limited to:¶¶

(a) Salary or wages received as an employee;¶¶

(b) Self-employment income from:¶¶

(A) Services industry;¶¶

(B) Sales;¶¶

(C) Assembly or manufacturing;¶¶

(D) Consulting;¶¶

(E) Property management;¶¶

(F) Gambling, other than income from sweepstakes, lotteries, bingo, keno, or slot machines;¶¶

(G) Hobby income; or¶¶

(H) Book advances.¶¶

(c) "Earned income" does not include:¶¶

(A) Investment income;¶¶

(B) Rent; and¶¶

(C) Royalties.¶¶

(d) Earned income is deemed to be received by the member on the date it is issued by the payer, except retroactive payments included in ORS 238.008 shall be deemed to be received by the member during the period for which the payment is allocated.¶¶

(e) Earned income includes the net profits of any business entity owned solely or jointly by a member and for which the member materially participates in the business, as defined by the Internal Revenue Service under 26 CFR 1.469-5T, as in effect on July 1, 2021.¶¶

(9) "Effective date of disability benefit" means the first day of the month following the date of disability, in which:¶¶

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

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

- (10) "Extended duration" means a period of not less than 90 consecutive calendar days unless the disability is expected to result in the death of the disabled member in less than 90 days.¶¶
- (11) "Independent medical exam" means an exam or exams conducted by a physician chosen by PERS for purposes other than for treatment which results in the issuance of a report or reports based on those exams, giving an opinion regarding the claimed injury or disease.¶¶
- (12) "Irregular and unpredictable manner" means earned income from other than employment. ¶¶
- (13) "Material contributing cause" means the efficient, dominant, and proximate cause of the disability, without which the member would not be disabled.¶¶
- (134) "Monthly salary" means salary as defined in ORS 238A.005 that is earned in the last full calendar month of employment and includes a differential wage payment, as defined in OAR 459-005-0001.¶¶
- (a) Retroactive payments or payments made due to clerical errors, paid in accordance with ORS 238A.005, are allocated to the period the salary was earned or should have been earned.¶¶
- (b) Payments of salary paid within 31 days of separation are allocated to the period the salary was earned and should be considered as paid on the last date of employment.¶¶
- (145) "Monthly salary received" means the greater of the salary paid for the last full calendar month of:¶¶
- (a) Employment before the date of disability; or¶¶
- (b) Differential wage payments made before the date of disability. This subsection is effective January 1, 2009.¶¶
- (156) "Performance of duty" means whatever an employee may be directed, required or reasonably expected to do in connection with ~~his or their~~ employment, and not solely the duties particular to ~~his or her~~ their position.¶¶
- (167) "Periodic review" means a review of a member receiving a disability benefit to determine whether or not a continued benefit is warranted.¶¶
- (178) "Physical capacity evaluation" means a comprehensive and objective evaluation performed by a physician, physical therapist, or occupational therapist to determine a member's physical or functional capacity to perform work. The evaluation may include an analysis of the member's ability to perform a specified job based on a position description and the member's abilities or limitations.¶¶
- (189) "Physician" means a doctor of medicine, a doctor of osteopathy, a doctor of oral surgery, a chiropractic doctor, a naturopathic doctor, a doctor of podiatric medicine, or a doctor of psychology practicing only within the purview of their license issued by the designated authority of a state.¶¶
- (1920) "Pre-existing condition" means a condition that was not sustained in actual performance of duty in a qualifying position with a participating employer.¶¶
- (201) "Protected health information" means health information created or received by a health care provider, health plan, or health care clearinghouse, where an individual has a reasonable belief that the information can identify the individual, which relates to:¶¶
- (a) The past, present, or future physical or mental health of an individual;¶¶
- (b) The provision of health care to an individual; or¶¶
- (c) The past, present, or future payment for the provision of health care to an individual.¶¶
- (212) "Total disability" means the inability to perform any work for which qualified for an extended duration due to physical or mental incapacitation.¶¶
- (223) "Vocational evaluation" means an evaluation conducted by a certified vocational consultant, to determine the ability of an applicant to perform any work for which they are qualified.¶¶
- (234) "Work related stress" means conditions or disabilities resulting from, but not limited to:¶¶
- (a) Change of employment duties;¶¶
- (b) Conflicts with supervisors;¶¶
- (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;¶¶
- (d) Relationships with supervisors, coworkers, or the public;¶¶
- (e) Specific or general job dissatisfaction;¶¶
- (f) Work load pressures;¶¶
- (g) Subjective perceptions of employment conditions or environment;¶¶
- (h) Loss of job or demotion for whatever reason;¶¶
- (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;¶¶
- (j) Objective or subjective stresses of employment; or¶¶
- (k) Personnel decisions.

Statutory/Other Authority: ORS 238A.450

Statutes/Other Implemented: ORS 238A.235



RULE SUMMARY: Regulations describing the eligibility for OPSRP disability benefits.

CHANGES TO RULE:

459-076-0005

Eligibility for Disability Benefits ¶¶

(1) Eligibility Standards:¶¶

(a) A member who was an active member employed as of the date of disability other than a police officer or firefighter 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.¶¶

(b) A member who was employed as a police officer or firefighter as defined in ORS 238A.005 must be unable to perform the work the member performed at the time the member became disabled for an extended duration to be eligible for a disability allowance.¶¶

(A) This standard applies to members applying for disability benefit who were last employed in a qualifying position as a police officer or firefighter.¶¶

(B) This standard is applicable to duty and non-duty disability applications under ORS 238A.235.¶¶

(C) For members who are concurrently employed by two or more employers in qualifying positions as a police officer or firefighter and as other than a police officer or firefighter, the "work performed at the time the member became disabled" standard only applies to the qualifying position worked as a police officer or firefighter member.¶¶

(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; ¶¶

(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. ¶¶

(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,

in any month in an irregular or unpredictable manner that exceeds 10 percent of the monthly salary of the member determined as of the last full month of employment before the disability commenced, 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 and 1099.

Statutory/Other Authority: ORS 238A.120, ORS 238A.450

Statutes/Other Implemented: ORS 238A.140, ORS 238A.235

RULE SUMMARY: Regulations and criteria for denial of OPSRP disability benefits.

CHANGES TO RULE:

459-076-0010

Criteria for Granting and Denying Disability Benefits ¶¶

(1) PERS shall determine eligibility for disability benefits based on an applicant's capacity and qualifications as set forth below.¶¶

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

(3) All claims of a disability must be supported by at least one physician's report, resulting from a medical examination, documenting how the injury or disease incapacitates the member. A physician assistant's examination report will be accepted as a physician's report when signed by a supervising physician who has examined the member.¶¶

(4) In addition, a disability benefit applicant shall be required to furnish the following: ¶¶

(a) For claims of mental or emotional disorder, at least one report of a treating or consulting psychiatrist or doctor of psychology;¶¶

(b) For claims of orthopedic injury or disease, at least one report of a treating or consulting orthopedic or physical medicine and rehabilitation specialist; ¶¶

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

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

(e) Any other specialized physician's report PERS deems necessary. ¶¶

(5) ~~To demonstrate that the member is unable to perform any work for which qualified~~ member who was employed as other than a police officer or firefighter is unable to perform any work for which qualified or the member who was employed as a police officer or firefighter as defined in ORS 238A.005 is unable to perform work the member performed at the time the member became disabled, as defined in OAR 459-076-0001(4), the applicant shall document how the injury or disease incapacitates the applicant. The standard is subjective (that is, whether the applicant is actually incapacitated) not objective (that is, whether a "normal" member would have been incapacitated by the same events). ¶¶

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

~~(A) Previous employment experience; ¶¶~~

~~(B) Formal education; ¶¶~~

~~(C) Formal training; ¶¶~~

~~(D) Transferable skills; ¶¶~~

~~(E) Age; and ¶¶~~

~~(F) Physical or mental impairment. ¶¶~~

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

~~(A) The position description for the job the member held at the time of their injury or illness; ¶¶~~

~~(B) Physical or mental impairment; ¶¶~~

~~(C) Any other relevant personnel documentation. ¶¶~~

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

~~(ed) For members who were employed as other than a police officer or firefighter, the inability of the applicant to perform the duties of his or her last job, in itself, does not satisfy the "unable to perform any work for which qualified" criterion. ¶¶~~

~~(de) An applicant's receipt of weekly unemployment insurance benefits after the date of disability shall create a rebuttable presumption that the member was able, available, and willing to perform any work for which qualified during the week for which the applicant received the benefits. ¶¶~~

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

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

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

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

Statutory/Other Authority: ORS 238A.450

Statutes/Other Implemented: ORS 238A.235

CHANGES TO RULE:

459-076-0030

Hearings on Denial or Discontinuance of Disability Benefit Allowances

- (1) A final denial of an application for disability benefits, or any decision discontinuing a previously granted disability benefit allowance may be reviewed in a contested case hearing.¶
- (2) A contested case hearing may be requested by a member by filing with the Board a written request as provided for in OAR 459-001-0035. ¶
- (3) For contested case hearing requests submitted by a member employed as a police officer or firefighter as defined in ORS 238A.005 to dispute the final denial of a disability benefit application under ORS 238A.235:¶
  - (a) PERS must refer the case for contested case hearing no later than 180 days after PERS receives the member's request for a hearing pursuant to OAR 459-005-0220, or, no later than 360 days after the member requests the hearing if the member requests an extension. ¶
  - (b) If a case is not referred for a hearing within the required timeline, the member prevails in disputing the final denial of the member's application under ORS 238A.235.¶
  - (c) Contested case hearing extension requests must be submitted to PERS in writing.¶
- (d) A member who is eligible for OPSRP disability benefits under ORS 238A.235 due to operation of the default contested case deadlines remains subject to routine periodic reviews as provided for in OAR 459-076-0050.¶
- (4) The contested case hearing shall be heard before an administrative law judge designated by the Office of Administrative Hearings and conducted in accordance with the Attorney General's Model Rules of Procedure as adopted by OAR 459-001-0005. The member may represent themselves or be represented by legal counsel. An Assistant Attorney General will appear at the hearing to assist PERS staff in presenting PERS' position, and to assist in the development of a complete hearing record.¶
- (5) The Board may deliberate and decide on final orders during regularly scheduled board meetings. The Board may instead deliberate and decide at any other time and place allowed by law, as determined on a case-by-case basis, such as electronically or via a telephone conference.¶
- (6) In accordance with OAR 459-001-0040, before initiating any judicial review of a final order, an applicant may file with the Board a petition for reconsideration. ¶
- (7) Any disputed claim concerning a disability benefit allowance or discontinuance of such allowance may be voluntarily settled on a lump-sum basis subject to recommendation of the assigned Assistant Attorney General and final approval of the Board. Settlements approved by the Board shall be paid upon receipt of a "Release and Covenant Not to Sue" signed by the applicant and the applicant's attorney, if any.

Statutory/Other Authority: ORS 238A.005, ORS 238A.235

Statutes/Other Implemented: ORS 238A.005, ORS 238A.235