

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

1 **459-015-0040**

2 **Proof of Case — Contested Case Hearings**

3 (1) Burden of Proof in Hearings: The burden of proof for entitlement to a disability
4 retirement allowance is upon the applicant. The Board is not required to prove that the
5 applicant is entitled to a disability retirement allowance.

6 (2) Standards of Proof:

7 (a) An order granting entitlement to a disability retirement allowance shall be
8 supported in the record by sufficient evidence demonstrating that the applicant suffers
9 from a physical or mental/emotional injury or disease, and that the applicant is unable to
10 perform any work for which he or she is qualified;

11 (b) An order denying entitlement to a disability retirement allowance need not be
12 supported by medical or vocational evidence presented by the Board. An order may deny
13 entitlement to a disability retirement allowance if the applicant fails to present sufficient
14 proof of disability and inability to work. An order may deny entitlement to a disability
15 retirement allowance on the basis of medical or vocational evidence presented by the
16 Board.

17 (3) Professional opinions:

18 (a) A physician or other health practitioner may express an opinion regarding
19 whether the injury or disease was caused by the performance of job duties;

20 (b) A physician or other health practitioner may express an opinion regarding the
21 applicant’s ability to perform any work, related tasks, or functions;

1 (c) The administrative law judge shall have the discretion to give more weight to the
2 testimony (findings and opinions) of the treating, the examining, or the consulting
3 physician as the facts indicate.

4 Stat. Auth.: ORS 183.310 - 183.550, 183.600 - 183.690, 237.171, 237.191 &
5 237.263

6 Stats. Implemented: