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Service Retirement System, have become disabled because of a medical condition, resulting in a service deficiency in performance, conduct, or attendance, or if there is no actual service deficiency, the disabling medical condition must be incompatible with either useful and efficient service or retention in the position.

(3) The disabling medical condition must be expected to continue for at least 1 year from the date the application for disability retirement is filed.

(4) The employing agency must be unable to accommodate the disabling medical condition in the position held or in an existing vacant position.

(5) An application for disability retirement must be filed with the Office of Personnel Management (OPM) before the employee separates from service, or within 1 year thereafter. This time limit can be waived only in certain instances explained in §831.1204.

(b) A National Guard technician who is retiring under the special provisions of 5 U.S.C. 8337(h) is not required to meet the conditions given in paragraphs (a) (2), (3), and (4) of this section. Instead, the individual must be disabled for membership in the National Guard or for the military grade required to hold his or her position and meet the other eligibility requirements under 5 U.S.C. 8337(h)(2).

§831.1204 Filing disability retirement applications: General.

(a) An employee or Member who is retiring on account of disability must file an application for annuity with OPM before separation from the service or within 1 year thereafter. OPM may waive this time limit if the employee or Member was mentally incompetent on the date of separation or within 1 year thereafter; in this case the individual or his or her representative may file the application with OPM within 1 year after the date the individual regains competency or a court appoints a fiduciary, whichever is earlier.

(b) An application for annuity which is on an inappropriate form, or on an appropriate form inadequately or incompletely executed, and which is received by OPM within 1 year of separation may be accepted as an informal claim for purposes of meeting the timeliness requirement.

(c) An employee's application for disability retirement will not preclude or delay any other appropriate personnel action by the employing agency. However, an agency may properly consider the existence of a pending disability retirement application when deciding whether and when to take other personnel actions.

§831.1205 Agency-filed disability retirement applications.

(a) *Basis for filing an application for an employee.* An agency must file an application for disability retirement of an employee who has 5 years of civilian Federal service when all of the following conditions are met:

(1) The agency has issued a decision to remove the employee;

(2) The agency concludes, after its review of medical documentation, that the cause for unacceptable performance, attendance, or conduct is disease or injury;

(3) The employee is institutionalized, or the agency concludes , based on a review of medical and other information, that the employee is incapable of making a decision to file an application for disability retirement;

(4) The employee has no personal representative or guardian; and

(5) The employee has no immediate family member who is willing to file an application on his or her behalf.

(b) *Agency procedures.* (1) When an agency issues a decision to remove an employee and not all of the conditions described in paragraph (a) of this section have been satisfied, but the removal is based on reasons apparently caused by a medical condition, the agency must advise the employee in writing of his or her possible eligibility for disability retirement.

(2) If the agency is filing a disability retirement application on the employee's behalf, the agency must inform the employee in writing at the same time it informs the employee of its removal decision, or at any time before the separation is effected, that—

(i) The agency is submitting a disability retirement application on the employee's behalf to OPM;