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determine whether there is a service deficiency, caused by disease or injury, of sufficient degree to preclude useful and efficient service, or a medical condition that warrants restriction from the critical task or duties of the position held. It is also the responsibility of the disability annuitant to obtain and submit evidence OPM requires to show continuing entitlement to disability benefits.

§831.1207 Withdrawal of disability retirement applications.

(a) OPM will honor, without question, an applicant's request to withdraw an employee-filed disability retirement application if it receives the withdrawal request before the employing agency has separated the current employee, or, if the employee has already separated from the service, the withdrawal request is received before the official notice of approval has been issued by OPM. Similarly, OPM will honor, without question, an agency's request to withdraw an agency-filed disability retirement application if it receives the withdrawal request before the employee has separated from the service. Once the request to withdraw the application is accepted, an applicant must reapply to receive any further consideration.

(b) Withdrawal of a disability retirement application does not ensure the individual's continued employment. It is the employing agency's responsibility to determine whether it is appropriate to continue to employ the individual.

(c) OPM considers voluntary acceptance of a permanent position in which the employee has civil service retirement coverage, including a position at a lower grade or pay level, to be a withdrawal of the employee's disability retirement application. The employing agency must notify OPM immediately when an applicant for disability retirement accepts a position of this type.

(d) OPM also considers a disability retirement application to be withdrawn when the agency reports to OPM that it has reassigned an applicant or an employee has refused a reassignment to a vacant position, or the agency reports to OPM that it has successfully accommodated the medical condition in the employee's current position. Placement consideration is limited only by agency authority and can occur after OPM's allowance of the application up to the date of separation for disability retirement. The employing agency must notify OPM immediately if any of these events occur.

(e) After OPM allows a disability retirement application and the employee is separated, the application cannot be withdrawn. However, an individual entitled to a disability annuity may decline to accept all or any part of the annuity under the waiver provisions of 5 U.S.C. 8345(d) or request to be found medically recovered under §831.1208(e) of this part.

§831.1208 Termination of disability annuity because of recovery.

(a) Each annuitant receiving disability annuity from the Fund shall be examined under the direction of OPM at the end of 1 year from the date of disability retirement and annually thereafter until the annuitant becomes 60 years of age unless the disability is found by OPM to be permanent in character. OPM may order a medical or other examination at any time to determine the facts relative to the nature and degree of disability of the annuitant. Failure to submit to reexamination shall result in suspension of annuity.

(b) A disability annuitant may request medical reevaluation under the provisions of this section at any time. OPM will reevaluate the medical condition of disability annuitants age 60 or over only on their own request.

(c) Recovery based on medical documentation. When an examination or reevaluation shows that a disability annuitant has medically recovered from the disability, OPM will terminate the annuity effective on the first day of the month beginning 1 year after the date of the medical examination showing recovery.

(d) Recovery based on reemployment by the Federal Government. Reemployment by an agency at any time before age 60 is evidence of recovery if the reemployment is in a permanent position at the same or higher grade or pay level as the position from which the

disability annuitant retired. The permanent position must be full-time unless the position the disability annuitant occupied immediately before retirement was less than full-time, in which case the permanent position must have a work schedule of no less time than that of the position from which the disability annuitant retired. In this instance, OPM needs no medical documentation to find the annuitant recovered. Disability annuity payments will terminate effective on the first day of the month following the month in which the recovery finding is made under this paragraph.

(e) Recovery based on a voluntary request. OPM will honor a written and signed statement of medical recovery voluntarily filed by a disability annuitant when the medical documentation on file does not demonstrate that the annuitant is mentally incompetent. OPM needs no other documentation to find the annuitant recovered. Disability annuity payments will terminate effective on the first day of the month beginning 1 year after the date of the statement. A disability annuitant can withdraw the statement only if the withdrawal is received by OPM before annuity payments terminate.

(f) When an agency reemploys a recovered disability annuitant at any grade or rate of pay within the 1-year period pending termination of the disability retirement benefit under paragraph (c), (d), or (e) of this section, OPM will terminate the annuity effective on the date of reemployment.

§ 831.1209 Termination of disability annuity because of restoration to earning capacity.

(a) *Restoration to earning capacity*. If a disability annuitant is under age 60 on December 31 of any calendar year and his or her income from wages or self-employment or both during that calendar year equal at least 80 percent of the current rate of basic pay of the position occupied immediately before retirement, the annuitant's earning capacity is considered to be restored. The disability annuity will terminate on the June 30 after the end of the calendar year in which earning capacity is restored. When an agency reemploys a restored disability annuitant at any grade or rate of pay within the 180-day waiting period pending termination of the disability retirement benefit, OPM will terminate the annuity effective on the date of reemployment.

(b) *Current rate of basic pay for the position occupied immediately before retirement.* (1) A disability annuitant's income for a calendar year is compared to the gross annual rate of basic pay in effect on December 31 of that year for the position occupied immediately before retirement. The income for most disability annuitants is based on the rate for the grade and step which reflects the total amount of basic pay (both the grade and step and any additional basic pay) in effect on the date of separation from the agency for disability retirement. Additional basic pay is included subject to the premium pay restrictions of 5 U.S.C. 5545 (c)(1) and (c)(2). A higher grade and step will be established if it results from using either the date of application for disability retirement or the date of reasonable accommodation, as adjusted by any increases in basic pay that would have been effected between each respective date and the date of final separation. Use of these two alternative pay setting methods is subject to paragraph (b)(1) (i) and (ii) of this section. The highest grade and step established as a result of setting pay under the normal method and the two alternative methods is designated as the rate of basic pay for the position occupied immediately before retirement and applies only to restoration to earning capacity decisions. In cases involving use of either of the two alternative pay setting methods, the determination of the rate of basic pay for the position occupied immediately before retirement is made by the employing agency at the time the disability retirement is allowed. OPM must review the rate so determined to establish whether the correct rate has been established, and will inform the employee of the proper rate at the time the disability annuity is awarded. This rate of basic pay becomes the basis for all future earning capacity determinations.

(i) The ''date of application for disability retirement'' is the date the application is signed by the authorized